This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

THE TREATY OF WAITANGI

OR

HOW NEW ZEALAND BECAME A BRITISH COLONY

T. LINDSAY BUICK

SIGILLVM · VNIVERSITATIS · CALIFORNIENSIS
LVX
FIAT
MDCCCLXVIII
EX LIBRIS

29 ships
30 land
32 "
17 [illegible]
79 seq. British sovereignty
93 US [illegible]
99 Treaty [illegible]
221 (Brit. sovereignty
230 [illegible] Borders [illegible]
241 seq. (land)

THE TREATY OF WAITANGI

UNIV. OF
CALIFORNIA

UNIV. OF
CALIFORNIA

THE COMMEMORATIVE MONUMENT.

"The symbol on which have been engraved the articles of the treaty, so that eyes may look thereon from year to year."

Frontispiece.

THE TREATY OF WAITANGI

OR

HOW NEW ZEALAND BECAME A BRITISH COLONY

BY

T. LINDSAY BUICK

AUTHOR OF

"OLD MARLBOROUGH," "OLD MANAWATU," "AN OLD NEW ZEALANDER"

WELLINGTON N.Z.

S. & W. MACKAY

LAMBTON QUAY

1914

DU427
B7

UNIV. OF
CALIFORNIA

Dedication

TO

ROBERT M'NAB

M.A., LL.B., F.R.G.S.

TO WHOSE ENTERPRISE AND SELF-SACRIFICE

WE OWE THE RECOVERY

OF SO MUCH OF OUR FAST RECEDING HISTORY

I RESPECTFULLY DEDICATE THIS BOOK

PREFACE

THE arrival in New Zealand waters of the battleship given to the Empire by this Dominion during a grave national crisis, marks a new epoch in the life of our country, and an event so pregnant with the spirit of Imperialism seems to the author to provide an appropriate point at which to pause and retrospectively review the causes which have made possible such an innovation in our naval policy—such a milestone in our national history. The story of New Zealand's progress since 1814 has been one of splendid emulation tempered by vicissitude. There have been dark days, days of doubt, of devastation by war, but never a period when our people lost heart or renounced their national faith. No attempt has been here made to tell the whole of that story. All that I have tried to do is to get back to the beginning of things, to the birth of law and order, to the genesis of the day when we were able to say to the Mother Land, "We will build you a Dreadnought, and yet another if needs must." The Treaty of Waitangi has been frequently derided and denounced, but it was in very truth the foundation of our nationhood. When we consider what Britain would have lost in material wealth, in loyalty, in strategetical advantage; when we reflect what it would have cost to have conquered the country by force of arms, then it is that we can see in clearer perspective the wisdom of Lord Normanby's policy, the breadth of his statesmanship,

and we are the better able to appreciate the triumph in diplomacy which that treaty represents.

Unfortunately the lapse of seventy-three years has robbed us of all who were actively concerned in its consummation, and equally unfortunately they have left few records behind them. There are grey-headed men and aged women alive to-day who were children at the time, but so far as I know there is only one with us now who was actually present at the signing of the treaty. Old Rahira te Hua, the daughter of one of the great Hongi's slaves, who has seen ninety-three summers pass, still carries in her weakening memory some misty recollections of that day fraught with such far-reaching consequences to both races. The opportunity for obtaining personal testimony of what happened is thus irretrievably gone. I have, therefore, had to rely for my information almost entirely upon official documents, supplemented by such fugitive memoranda as may have been left by the few concerned, who happen to have placed their opinions or impressions on record. The gathering together of this widely-scattered material, the moulding of it into a connected narrative, has had its pleasurable as well as its anxious moments, for the subject has not been without its perplexities, ambiguities, and contradictions. All of these I have sought to sift with justice and treat with perfect impartiality. Where I have met with conflicting statements it has been my endeavour to so present the position that the reader will be able to form his own conclusions, and where I have expressed my personal opinions they have only been such opinions as appeared to me to be justified by the facts of the case. Whatever impression the reading of this narrative may leave with those who peruse it, I for one cannot lay down my pen from its writing without

affirming that two things appear to me to be established—that Britain has no reason to be ashamed of the manner in which she obtained the sovereignty of New Zealand, and in the light of subsequent events she has no reason to regret it. I have not attempted to arraign or to defend the various, real or alleged, breaches of the treaty committed by our Governors or Governments. That phase of the subject is necessarily so controversial in character, that to do it justice would require a volume of its own, the need for which has to some extent been obviated by the publication in 1888 of his *Aureretanga*, by Mr. G. W. Rusden, in which that vigorous writer deals exhaustively with at least the Maori side of the case. The Treaty of Waitangi, the first diplomatic arrangement of the kind entered into between Britain and a savage race, was a wise, politic, and humane measure, the justice of which has been vindicated with the lapse of time. In the expressive language of a native address to Lord Ranfurly, "This treaty has been rained upon by the rain, it has been exposed to the blast of the storm, but the words are still clear, they cannot be obliterated."

Let us hope that no attempt will ever be made to violate either its letter or its spirit.

THE AUTHOR.

"Ennismore,"
Boulcott Street, Wellington,
April 30, 1913.

NOTE OF ACKNOWLEDGMENT

DURING the compilation of this work I have necessarily been placed under obligations to a number of gentlemen, whose services I now desire to acknowledge.

I am especially indebted to Mr. Charles Wilson, Librarian to the New Zealand Parliament, for the privilege of freely examining the rare official papers I desired to consult. In like manner the courtesy of Mr. A. Hamilton, Director of the Dominion Museum, must be acknowledged in placing at my disposal the New Zealand books in the Carter Collection, while the Hon. J. T. Paul, M.L.C., has been most helpful in consulting for me authorities contained in the Hocken Collection at Dunedin. To Mr. Robert M'Nab I am obliged for the extract from Captain Lavaud's Despatch to the French Minister of Marine, now made public for the first time, and to Te Heuheu Tukino, the present representative of that family, for the narrative of his illustrious grandfather's rejection of the treaty. Valuable assistance has also been lent by the Hon. Dr. Pomare, M.P., by Messrs. H. M. Stowell, L. M. Grace, and Elsdon Best, in solving Maori problems of a technical nature, and to the Rev. T. G. Hammond I am indebted for favours of a more general character. For permission to use the portrait of Tamati Waaka Nēne I have to thank Mr. H. E. Partridge, of Auckland, and especially Mr. A. M'Donald for his generous assistance in preparing the balance of the illustrations.

The written authorities consulted will be found in the Appendix.

CONTENTS

CHAPTER I

PAGE

In the Beginning 1

CHAPTER II

Seeking a Way 36

CHAPTER III

Finding a Way 60

CHAPTER IV

The Maori Magna Charta 87

CHAPTER V

In Search of Signatures 135

CHAPTER VI

The Treaty 214

APPENDIX 297

BIBLIOGRAPHY 345

ILLUSTRATIONS

	FACE PAGE
The Commemorative Monument	*Frontispiece*
Town of Russell	12
James Busby	26
Lord Normanby	48
Captain Hobson, R.N.	64
The Mission Church at Kororareka	70
Mr. Busby's Residence	98
The Waitangi Falls	108
Tamati Waaka Nēne	118
Rev. Henry Williams, C.M.S.	154
Major Bunbury, K.T.S.	172
Horahora-Kakahu Island	198
A Section of the Treaty Signatures	238
Captain Hobson's Signatures to the Treaty	258
Earl Derby	282
Map of the Bay of Islands	*On page* 347
Map of Cloudy Bay	,, 348

Univ. of California

CHAPTER I

IN THE BEGINNING

"THE Islands of New Zealand have long been resorted to by British Subjects on account of the valuable articles of commerce which they produce, and by reason of the peculiar advantages which they offer to whale-ships requiring repair. By the nearness of these Islands to the British settlements of New South Wales and Van Dieman's Land has also led to their being resorted to as an asylum for fugitive British convicts, and such persons having associated with men left in New Zealand by whale-ships and other vessels, have formed a Society which indispensably requires the check of some contending authority. Her Majesty's Government have therefore deemed it expedient to station at New Zealand an officer, with the character and powers of a British Consul, and I have the satisfaction to acquaint you that the Queen has been graciously pleased to select you for that appointment." So wrote Viscount Palmerston, Foreign Secretary in Lord Melbourne's Cabinet, on August 13, 1839, to Captain William Hobson, R.N., and this letter may be taken as the first satisfactory evidence we have that the British Government had at last decided to accept their long-evaded responsibility in connection with New Zealand. Ever since the day when Captain Cook took possession of the country in the name and for the use of King George III., these islands had been allowed by succeeding British Governments to remain a neglected geographical quantity, and this very neglect had now robbed the nation of the

title which Cook had by his splendid enterprise secured for it.

The Law of Nations has well defined the principle that before a country becomes entitled to claim sovereignty in any part of the globe "by right of discovery" it is not sufficient that the mariners of that country should sail forth and discover new lands; but there must be some effective act immediately following, such as systematic occupation, in order to bind other peoples to respect the discovering nation's claim.

During the latter part of the century which had elapsed between the time of Cook's proclamation to the world and the day when the Melbourne Cabinet decided that Britain must assume in earnest her responsibilities in the South Pacific there had not only been no systematic occupation of New Zealand by Britain, but rather a systematic renunciation of the nation's intention in that direction. The Duke of Wellington had petulantly declared that England had colonies enough, and Minister after Minister who had presided over the Colonial Office had in deeds, if not in words, endorsed this policy of anti-Imperialism. There were at this time none amongst the British statesmen blessed with that broader grasp, that wider vision of an Empire "extending over every sea, swaying many diverse races, and combining many diverse forms of religion," which afterwards animated the colonial policy of Lord John Russell.[1] The courage and capacity which that planter of Imperial outposts declared were necessary to build such an Empire—to effect such a wholesome blending of peoples—were wanting, and there was even an imminent danger that in this negatory attitude towards colonising other Powers would come to regard Britain not as an equal, nor with the fear that an equal can inspire, but as a timorous weakling, a nation destitute of enterprise, the product of a waning courage and of a pusillanimous hand.

[1] On one occasion when Lord John Russell was asked by a French Diplomat how much of Australia Britain claimed, he promptly replied, "The whole of it."

Thus it came about that when in 1839 the Ministry of Lord Melbourne found themselves coerced by circumstances into recognising the need for systematic colonisation, they discovered themselves destitute of what most people believed they possessed—a title to sovereignty in New Zealand "by right of discovery."

The spirit of the British nation had not, however, been as idle as the British statesman, and inherent enterprise, combined with an inherent love of adventure, had sown and matured the seed which continuous Ministries had persistently declined to nourish. The elements which had contributed to the irregular settlement of New Zealand were faithfully recorded in Lord Palmerston's letter to Captain Hobson, and a more unpropitious beginning for any colony could scarcely be imagined. The number of British subjects who, up to 1839, had resorted to New Zealand for the purposes of legitimate and respectable trade were comparatively few, but it is estimated that even earlier than this there were over five hundred escaped convicts living along the sea coast in and around the Bay of Islands, the point at which settlement had, up to that time, chiefly congregated. Of those directly and indirectly concerned in the whaling industry there must have been a considerable number, for it is officially recorded that in the year 1836 no less than one hundred and fifty-one vessels had visited the Bay of Islands alone, and the proportion was even larger in the first half of the succeeding year.

The combination of whaler and convict was not one calculated to strengthen the morality of the community, and so large a leaven of the lawless class, together with the insatiable desire of the natives to procure muskets, had the effect of creating a state of society which, in the words of the Foreign Secretary, "indispensably required the check of some contending authority." In the absence of any such authority the more respectable settlers at the Bay of Islands had organised themselves into a self-constituted Association, into whose hands was committed the administration of a rude justice, which recognised

a liberal application of tar and feathers as meet punishment for some of the offences against society. A steadying influence had also been supplied by the appointment at intervals since 1814 of gentlemen empowered to act as Justices of the Peace, their authority being derived from a Commission issued by the Governor of New South Wales, and, if illegal, was on more than one occasion acted upon with salutary effect.[1]

Although it has been a popular sport on the part of many writers to throw darts of sarcasm at the labours of the Missionaries, they, too, must be accounted a tremendous influence for good, not so much, perhaps, in checking the licentiousness of the Europeans, as in preventing the natives from becoming contaminated by it. Destructive internecine wars had been waging "with fiendish determination" for many years under the conquering leadership of Hongi, Te Wherowhero, Te Waharoa and Te Rauparaha, by which whole districts had been depopulated, and tribe after tribe practically annihilated. Still the Maori people were a numerous, virile and warlike race, capable of deeds of blackest barbarism, or equally adaptable to the softening influences of Christianity and civilisation.

So far as the darker side of their history is concerned, we have it on the irreproachable authority of the Rev. Samuel Marsden that the tragedies in which the natives made war upon the Europeans were in almost every instance merely acts of retalliation for earlier outrages.[2] The killing of Marian du Fresne and the massacre on

[1] As indicating the state into which society had fallen it may be mentioned that one Master of a trading vessel who had no muskets to sell, gave a chief a packet of corrosive sublimate wherewith to destroy his enemies. To correct this condition of affairs a proclamation was published in the New South Wales Government *Gazette* in 1814 appointing the Rev. Mr. Kendall and the chiefs, Ruatara, Hongi and Korokoro, Magistrates at the Bay of Islands, for the purpose of suppressing outrages. This authority was subsequently revoked as being illegal.

[2] "The Rev. Mr. Kendall has received a commission to act as a Magistrate, but it does not appear that he possesses the means of rendering effective assistance to the natives against the oppressions of the crews of European vessels, and of controlling in any degree the intercourse that subsists between them."—Commissioner Bigge to Earl Bathurst, 1823.

board the *Boyd* were unquestionably so; and the dread of the natives which for several years after these events almost suspended the sea trade with New Zealand was the natural fruit of that cruelty which trusting Maori seamen had suffered at the hands of unscrupulous captains, who had either inveigled them or forced them on board their whalers. Dark as the history of New Zealand was during these Alsatian days, there is no chapter quite so dark, or which redounds less to the credit of the white race, than the story of the sea-going natives who were taken away from these sunny shores,[1] and abandoned in foreign countries, or driven at the end of the lash to tasks far beyond their physical strength, resulting in the premature death of many, while the poison of undying hatred entered into the souls of the survivors.

The position on shore was scarcely less disgraceful, for the natives resident in the seaward *pas* were cruelly ill-treated by the crews of the European vessels who visited them; and it is stated in the records of the Church Missionary Society that within the first two or three years of the arrival of the Missionaries not less than one thousand Maoris had been murdered by Europeans, the natives unhappily not infrequently visiting upon the innocent who came within their reach revenge for crimes perpetrated by the guilty who had evaded their vengeance.

But apart from the commission of actual outrage there was debauchery of several kinds, and always of a pronounced type. "They lead a most reckless life, keeping grog shops, selling spirituous liquors to both Europeans and natives, living with the native females in a most discreditable way, so that the natives have told me to teach my own countrymen first before I taught them. They have called us a nation of drunkards from their seeing a majority of Europeans of that stamp in New Zealand." Such was the testimony of an erstwhile Missionary, Mr. John Flatt, when giving evidence before the House of Lords regarding the northern portion of the

[1] This practice was prohibited by the Governor of New South Wales by Proclamation, on November 9, 1814.

colony; and not less unsatisfactory was the position in the South Island, where the whalers were the preponderating section of the white population.

At both Cloudy Bay and Queen Charlotte Sound there was, in 1837, a considerable white settlement, each man being a law unto himself, except in so far as he was under the dominion of the head man of the station. This at least was the opinion formed by Captain Hobson when visiting those parts in H.M.S. *Rattlesnake*. In describing the result of his enquiries to Governor Bourke, he dismissed the probability of these settlements being attacked by the natives, because they were so confederated by their employment; but he significantly added: "The only danger they have to apprehend is from themselves, and that is in a great measure neutralised by the contending influences of their own reckless and desperate character."

The Rev. Mr. Stack, then labouring in the north, in writing home to the parent Society, complained bitterly of the unprincipled white men who had escaped from the chain gangs at Sydney, and who had recently shown themselves so desperate that two were seized and taken to Sydney to be tried at the Assizes on a charge of attempted robbery and murder.[1] Mr. Stack pleaded for the intervention of the British Government, which he hoped would not leave the country at the mercy of the escaped convicts, or the natives to the influence of a commerce carried on with so many circumstances destructive to the moral health of the people, that if unchecked, would effectually do the work of depopulation. "We have no law or justice," wrote Mr. Stack, "no punishment for crime but private revenge."

In the beginning of the year 1840 Kororareka, the settlement at the Bay of Islands which had the greatest right to claim the dignity of a township, contained about three hundred inhabitants of all ages, exclusive of the numerous sailors, whose nightly revels constituted the

[1] Edward Doyle underwent the extreme penalty of the law at Sydney for a burglary committed at the Bay of Islands on June 18, 1836, the sentence being imposed under a statute of George IV.

only interruption to the peace and harmony which generally prevailed. These gentry resorted in great numbers to the native village at the inner anchorage, where the principal chief carried on the lucrative business of grog-selling, besides another of a still more discreditable kind, for the convenience of his reckless customers—French, English, and American. "Here," according to Dr. Jameson, "might be seen the curious spectacle of a still savage chief enriching himself at the expense of individuals who, although belonging to the most civilised and powerful nations in the world, were reduced to a lower degree of barbarism by the influence of their unbridled licentiousness."

Contact with such social degenerates was not calculated to inspire the natives with a high ideal of European morality, nor with a conspicuous example of rectitude; but where the influences destructive of decency and order were less virulent the Missionaries had a more hopeful tale to tell. "The door is opening before us in every direction, and the people are pressing and entreating us to enter. Had we only more help, where we have now a hundred natives under our care, we would soon have a thousand." Such was the report of the Rev. Mr. Turner, one of the Wesleyan Missionaries [1] at Hokianga, in urging his Society to send more workers to this corner of the human vineyard. The attendance and attention of the natives at Divine worship were regular and fixed, while it is recorded that their responses to the reading of the Litany were particularly devout.

The sincerity of many of these early converts was one of the most remarkable features of the evangelising of the Maori; and the Rev. Dr. Beecham, in giving evidence before the Lords' Committee in 1838, quoted this eloquent passage from one of the letters of the Rev. Mr. Hobbs to illustrate the warmth of Maori piety.

[1] The Wesleyan mission in New Zealand originated in a visit made to this country in the year 1819 by the Rev. Mr. Leigh, a missionary of the Wesleyan Society then stationed in New South Wales. He made the visit for the benefit of his health on the recommendation of the Rev. Mr. Marsden.

" The beauty of the Liturgy, as translated by our brethren at the Bay of Islands into the Native tongue, is most exquisite, and to me hardly loses any of the force of original composition, and, I have no doubt, has been made a great blessing unto many by putting words of prayer into their mouths, and thus teaching them to pray. Many times has my heart gloried within me while repeating the 'Te Deum Laudamus,' and especially that part—

Tapu tapu tapu rawa E Ihowa te Atua o nga mano tuauriuri whaioio,

that is—

Holy, holy, holy, Lord God of Sabaoth,

and hear them respond—

E kiki ana te Rangi me te whenua i te kahanga o tou kororia

Heaven and Earth are full of the majesty of Thy Glory.

" I have been informed," continued Dr. Beecham, " by those who have witnessed the celebration of public worship in the principal church at Mangungu, that to hear 700 or 800 of the Christian natives correctly and promptly utter the responses, and then sing the praises of the True God, is highly affecting. Another feature of their character is their strict observance of daily social prayer. At dawn of day all the inhabitants of the villages assemble together in the chapel at the sound of the bell, or some piece of metal used as a substitute, to read the scriptures and to pray. The same order is observed in the evening. When the evening approaches the whole of the population moves to the house of God, and close the day with devotions. Their reverence for the Sabbath is remarkable. Those who come from a distance to attend Divine worship at Mangungu do not travel on the Sunday, but on the Saturday, and return on the Monday. They refrain from all work on the Lord's Day. So strict are their views on the sanctity of the Sabbath they do not even prepare their food on that day. The arrival of a vessel is always a matter of considerable excitement to the natives of New Zealand, but if a vessel arrives on the Sunday no stir is made."

It would be difficult to find any description quite so touching concerning the religious observances of the *Pakehas*, whose irreverence more than once roused the righteous indignation of the Rev. Mr. Marsden.

Although the British authorities had as yet taken no decisive step towards acquiring sovereignty in New Zealand, it cannot be said that the state of society in the country had entirely escaped their notice. Especially were the successive Governors of New South Wales vigilant in keeping Ministers posted as to passing events. Many must have been their anxious moments, for they being the nearest representatives of the Crown were naturally most solicitous for the conduct and fate of their countrymen. As far back as 1814 Governor Macquarie had declared New Zealand to be a part of that colony, and it was thought that the jurisdiction of the Supreme Court had also been extended to this country. These proceedings were, however, almost a nullity, for had they been formal and constitutional—which they were not—the practical difficulties in the way of bringing offenders to justice were so great that the attempt was only made in a few isolated and extreme instances.

This state of official negation continued until the tidings of the part played by Captain Stewart and his brig *Elizabeth* in Te Rauparaha's Akaroa raid reached Sydney. Then Governor Darling and his successor, Sir Richard Bourke, realised that this game of glorified bluff could not go on indefinitely. The strongest possible representations were accordingly made to the Home authorities, and these representations were followed by a pathetic petition from the natives to King William IV., which was transmitted to Sir Richard Bourke through Mr. Yate, one of the principal members of the Church Missionary Society's staff then labouring in the colony.

The leading chiefs of the northern part of the Islands had long ere this realised the ineffectiveness of their tribal system to cope with the altered state of society. The Missionaries on their part watched with anxiety the unhappy trend of affairs, knowing that if some more

enlightened course was not given to events, a serious collision would in all probability arise between the two races, which could scarcely terminate otherwise than in the extermination or expulsion of the one or the other.

Being fully persuaded that to maintain the chiefs and their tribes as an independent people was the most effective safeguard against foreign aggression, they saw with deepest regret the intestine warfare which was going on amongst the natives, thinning their ranks, and rendering them every day less able to resist the pretensions of a foreign power. Stung by a sense of failure, and excited by a rumour that the French were at hand,[1] the chiefs placed themselves under Missionary direction and addressed themselves to the King in the following diplomatic terms[2]:—

TO KING WILLIAM, THE GRACIOUS CHIEF OF ENGLAND

KING WILLIAM—We, the chiefs of New Zealand assembled at this place, called the Kerikeri, write to thee, for we hear that thou art the great Chief of the other side of the water, since the many ships which come to our land are from thee.

We are a people without possessions. We have nothing but timber, flax, pork and potatoes, we sell these things, however, to your people, and then we see the property of Europeans. It is only thy land which is liberal towards us. From thee also come the Missionaries who teach us to believe on Jehovah God, and on Jesus Christ His Son.

We have heard that the tribe of Marian[2] is at hand coming to take away our land, therefore we pray thee to become our friend and guardian of these Islands, lest through the teazing of other tribes should come war to us, and lest strangers should come and take away our land. And if any of thy people should be troublesome or vicious towards us (for some persons are living here who have run away from ships), we pray thee to be angry with them that they may be obedient, lest the anger of the people of this land fall upon them.

---

[1] Petition sent to King William through Mr. Yate, per Colonial Secretary of New South Wales, November 16, 1831.

[2] The French were called by the natives "the tribe of Marian" after Captain Marian du Fresne, who met his untimely death at their hands in 1772. To show that these fears were not altogether unfounded, it may be mentioned that the French ship *La Favourite* anchored in the Bay of Islands the day after the petition was signed.

This letter is from us the chiefs of the natives of New Zealand :

WARERAHI,	chief of	Paroa.	RIPE,	chief of	Mapere.
REWA,	,,	Waimate.	HARA,	,,	Ohaeawai.
PATUONE,	,,	Hokianga.	ATUAHARRE,	,,	Kaikohe.
NENE,	,,	Hokianga.	MORTARA,	,,	Pakanae.
KEKEAO,	,,	Ahuahu.	MATANGI,	,,	Waima.
TITORE,	,,	Kororareka.	TAUNUI,	,,	Utakura.
TAMARANGA,	,,	Taiamai.			

The accumulating reports of increasing disorder, the strenuous recommendations of Governor Bourke, added to the touching appeal of the chiefs, at length moved the Colonial Office to acquiesce in the contention that some one should be sent to New Zealand directly charged with the duty of representing the British Crown. In replying to the Native petition, Lord Goderich,[1] who was then at the Colonial Office, after expressing the gratification the petition had afforded the King, accordingly intimated that it had been decided to appoint as British Resident Mr. James Busby, whose duty it would be to investigate all complaints which might be made to him. "It will also be his endeavour," wrote his Lordship, "to prevent the arrival amongst you of men who have been guilty of crimes in their own country, and who may effect their escape from the place to which they have been banished, as likewise to apprehend such persons of this description who may be found at present at large. In return for the anxious desire which will be manifested by the British Resident to afford his protection to the inhabitants of New Zealand, against any acts of outrage which may be attempted against them by British subjects, it is confidently expected by His Majesty that on your part you will render to the British Resident that assistance and support which are calculated to promote the objects of his appointment, and to extend to your country all the benefits which it is capable of receiving from its friendship and alliance with Great Britain."

Mr. Busby, who had thus been chosen for the responsible task of guarding both British and Native interests, was the son of a successful civil engineer in

[1] He afterwards became Earl of Ripon.

Australia, but it is doubtful whether he had passed through the administrative experience necessary to fit him in all respects for his arduous post.[1] His position was rendered still more difficult by reason of the fact that, much as Ministers might have wished to do so, it had been found impossible to sweep away the constitutional difficulties which faced them on every side. Indeed so hampered was the situation by the circumstance that Britain had not acquired, or claimed Sovereign rights in New Zealand, that when Governor Bourke came to direct Mr. Busby upon the scope of his office, he was compelled to lay greater stress upon the things he could not do, than upon the powers he was at liberty to exercise.

Mr. Busby was instructed to leave Sydney by H.M.S. *Imogene*, commanded by Captain Blackwood, and on arrival at the Bay of Islands he was to present to the chiefs the King's reply to their petition, "with as much formality as circumstances may permit." This instruction Mr. Busby used his best endeavours to obey, for after a stormy passage across the Tasman Sea he reached the Bay of Islands on Sunday, May 5, 1833. Here he at once made arrangements with the settlers and Missionaries to invest his landing with an importance which was its due; but continued storms made it impossible to perform any kind of open-air ceremony with comfort and dignity until the 17th. On that day, however, the weather had moderated, and at an early hour preparations were afoot for the inevitable feast, a proclivity to which both Maori and European appear equally addicted. At a later hour Mr. Busby, accompanied by the first lieutenant of the *Imogene*, landed under a salute of seven guns, and no sooner had he set foot on shore than he was claimed by the old chief, Tohitapu, as his *Pakeha*. A cordial greeting awaited the Resident by the Missionaries, to

[1] Mr. Busby's father had been appointed in 1823 as a Mineral Surveyor and Civil Engineer for the colony of New South Wales, by Earl Bathurst, and Mr. Busby accompanied him as a settler, taking with him capital to the extent of about £1000. At the time of his appointment Mr. Busby was Collector of Internal Revenue and a Member of the Land Board of New South Wales.

RUSSELL.

Formerly Kororareka.

UNIV. OF
CALIFORNIA

whose village at Paihia, but a short distance off, the party at once adjourned. Here three hoary-headed chiefs delivered speeches of welcome, a *haka* was danced, and still more speeches were made in honour of a stranger whose coming was regarded as the event of first importance since the landing of Samuel Marsden seventeen years before. With these evidences of native hospitality at an end, the formal proceedings were commenced in front of the little mission chapel round which the people crowded in motley throng, shouting songs of welcome, and discharging fitful volleys of musketry. By dint of lively exertion order was at length restored, and standing at a table, with Captain Blackwood on his right and Mr. Henry Williams, who interpreted, on his left, Mr. Busby read the King's reply to the people's Petition for protection. The reading of this document was listened to with profound respect by the Europeans, who rose and uncovered their heads, while the natives hung upon the words of Mr. Williams as he explained the professions of the King's goodwill, of the sincerity of which Mr. Busby was a living evidence. Then followed Mr. Busby's own address, which was listened to by the wondering crowd with no less rapt attention:

MY FRIENDS—You will perceive by the letter which I have been honoured with the commands of the King of Great Britain to deliver to you, that it is His Majesty's most anxious wish that the most friendly feeling should subsist between his subjects and yourselves, and how much he regrets that you should have cause to complain of the conduct of any of his subjects. To foster and maintain this friendly feeling, to prevent as much as possible the recurrence of those misunderstandings and quarrels which have unfortunately taken place, and to give a greater assurance of safety and just dealing both to his own subjects and the people of New Zealand in their commercial transactions with each other, these are the purposes for which His Majesty has sent me to reside amongst you, and I hope and trust that when any opportunities of doing a service to the people of this country shall arise I shall be able to prove to you how much it is my own desire to be the friend of those amongst whom I am come to reside. It is the custom of His Majesty the King of Great Britain to send one or more of his servants to reside as his representatives in all those countries in Europe and America with which he is on terms of

friendship, and in sending one of his servants to reside amongst the chiefs of New Zealand, they ought to be sensible not only of the advantages which will result to the people of New Zealand by extending their commercial intercourse with the people of England, but of the honour the King of a great and powerful nation like Great Britain has done their country in adopting it into the number of those countries with which he is in friendship and alliance. I am, however, commanded to inform you that in every country to which His Majesty sends his servants to reside as his representatives, their persons and their families, and all that belongs to them are considered sacred. Their duty is the cultivation of peace and friendship and goodwill, and not only the King of Great Britain, but the whole civilised world would resent any violence which his representative might suffer in any of the countries to which they are sent to reside in his name. I have heard that the chiefs and people of New Zealand have proved the faithful friends of those who have come among them to do them good, and I therefore trust myself to their protection and friendship with confidence. All good Englishmen are desirous that the New Zealanders should be a rich and happy people, and it is my wish when I shall have erected my house that all the chiefs will come and visit me and be my friends. We will then consult together by what means they can make their country a flourishing country, and their people a rich and wise people like the people of Great Britain. At one time Great Britain differed but little from what New Zealand is now. The people had no large houses nor good clothing nor good food. They painted their bodies and clothed themselves with the skins of wild beasts; every chief went to war with his neighbour, and the people perished in the wars of their chiefs even as the people of New Zealand do now. But after God sent His Son into the world to teach mankind that all the tribes of the earth are brethren, and that they ought not to hate and destroy, but to love and do good to one another, and when the people of England learned His words of wisdom, they ceased to go to war against each other, and all the tribes became one people. The peaceful inhabitants of the country began to build large houses because there was no enemy to pull them down. They cultivated their land and had abundance of bread, because no hostile tribe entered into their fields to destroy the fruit of their labours. They increased the numbers of their cattle because no one came to drive them away. They also became industrious and rich, and had all good things they desired. Do you then, O chiefs and tribes of New Zealand, desire to become like the people of England? Listen first to the Word of God which He has put into the hearts of His servants the missionaries to come here and teach you. Learn that it is the will of God that you should all love each other as brethren, and when wars shall cease among you then shall your country flourish. Instead of the roots of the fern

you shall eat bread, because the land shall be tilled without fear, and its fruits shall be eaten in peace. When there is an abundance of bread we shall labour to preserve flax and timber and provisions for the ships which come to trade, and the ships that come to trade will bring clothing and all other things which you desire. Thus you become rich, for there are no riches without labour, and men will not labour unless there is peace, that they may enjoy the fruits of their labour.

The Resident's address was received with an outburst of wild applause, and soon the smoke of discharging muskets again hung heavy on the morning air. But there was still other diversion for the natives, to whom the proceedings had proved a great novelty. The mental feast which was to provide them with food for discussion for many days was now supplanted by a more material repast, at which fifty settlers were entertained at Mr. Williams's house, while the Maoris were fed with a sumptuousness that made memorable to them the coming and the installation of the first British Resident.

As an adjunct to his slender authority, Mr. Busby had been informed by Governor Bourke that Sir John Gore, the Vice-Admiral commanding the Indian Squadron of the Navy, would be instructed to permit his ships to call in at New Zealand ports as frequently as possible, and offer him what support they could during these fitful visits. But upon neither naval nor civil power was Mr. Busby to rely overmuch. He was to depend for his authority rather upon his moral influence and his co-operation with the Missionaries, to whom he went specially accredited.

Mr. Busby has frequently been made the butt of the humorist, because his bark was necessarily worse than his bite. The Maori cynic of his day chuckled as he dubbed him "*He manuwa pu kore*" ("A man-o'-war without guns"), and many a playful jest has since been made at his expense, all of which is both unfair and ungenerous to Mr. Busby. The difficulty in the way of investing him with legal power was thus tersely explained by Sir Richard Bourke during the course of his initial instructions to the Resident:

You are aware that you cannot be clothed with any legal power or jurisdiction, by virtue of which you might be enabled to arrest British subjects offending against British or Colonial law in New Zealand. It was proposed to supply this want of power and to provide further enforcement of the criminal law as it exists amongst ourselves, and further to adapt it to the new and peculiar exigencies of the country to which you are going, by means of a Colonial Act of Council grafted on a statute of the Imperial Parliament. Circumstances which I am not at present competent to explain have prevented the enactment of the Statute in question.[1] You can therefore rely but little on the force of law, and must lay the foundation of your measures upon the influence which you shall obtain over the Native Chiefs. Something, however, may be effected under the law as it stands at present. By the 9th Geo. IV., cap. 83, sec. A, the Supreme Courts of N. S. Wales and Van Dieman's Land have power to enquire of, hear and determine, all offences committed in N.Z. by the Master and crew of any British ship or vessel, or by any British subject living there, and persons convicted of such offences may be punished as if the offence has been committed in England. . . . If therefore you should at any time have the means of sending to this colony any one or more persons capable of lodging an information before the proper authorities here, of an offence committed in N.Z. you will, if you think the case of sufficient magnitude and importance, send a detailed report of the transaction to the Colonial Secretary by such persons who will be required to depose to the facts sufficient to support an information upon which a bench Warrant may be obtained from the Supreme Court for the apprehension of the offender, and transmitted to you for execution. You will perceive at once that this process, which is at best a prolix and inconvenient operation and may incur some considerable expense, will be totally useless unless you should have some well-founded expectation of securing the offender upon or after the arrival of the warrant, and of being able to effect his conveyance here for trial, and that you have provided the necessary evidence to ensure his conviction.

Shorn of everything which suggested practical power, except the name of British Resident, Mr. Busby soon found himself in no very enviable position. He was ignored by the whites and laughed at by the natives. To add still further to his difficulties he was slow to recognise that the Missionaries in the long years of their labour had naturally acquired more influence with the natives than he could possibly have, and he was reluctant to achieve

[1] The Bill was not passed, because it was found that Parliament was legislating in a "foreign country," and this it has no power to do.

his object by appearing to play a subordinate part to them. He had been explicitly instructed to seek their hearty co-operation, and take every advantage of the high respect in which they were held by the natives. It was not long, however, before he began to develop ideas of his own and to formulate a policy which he could not enforce, because it was at variance with that of the Missions.

He had also been accredited to the thirteen chiefs who had signed the memorial to the King in the previous year, and had been advised to seek their assistance in arresting those offenders whom he had power to transmit to Sydney for trial. The number of such persons whom he might have apprehended now totalled, we are assured, to several hundreds; but the process was, as Sir Richard Bourke had suggested, so obviously "prolix and inconvenient," that Mr. Busby exercised to the full the measure of discretion given him by the Governor, and left them severely alone.[1]

According to Captain Fitzroy, who visited the Bay of Islands during the cruise of H.M.S. *Beagle* in 1835, he preferred to fold his hands and allow events to shape their own course. "He chose to tell every one who went to him that he had no authority; that he was not even allowed to act as a Magistrate, and that he could do nothing. The consequence was that whenever anything did occur, those who were aggrieved went to the Missionaries. Mr. Busby might have very considerable power, because the Missionaries have such influence over the whole body of natives they could support him. If Mr. Busby wanted a person taken up he had only to express his wish to the Missionaries, and the natives would have done it for them, but he was slow to act in that way. He was sent there in a high character, and was accredited to the Missionaries, and had he communicated with them freely and allowed them to be cognisant of, if not the agents in all that took place, while he remained as the

[1] Mr. Busby's difficulties in this connection were considerably increased by the fact that when British subjects were accused they frequently sheltered themselves under the American flag, saying, "We are Americans, you have no right to interfere with us."—Captain Fitzroy.

head, and the understanding had been that all that the Missionaries did was done in concert with Mr. Busby, and all that eventuated was from him as the head, his influence would have been far too great for any individuals in that part of the Islands to resist. By dividing the two influences Mr. Busby lost his power of preventing mischief. He remained on tolerably good terms with them, but separated himself in an unnecessary degree from them, and thought he might differ from them sometimes, even to taking a precisely opposite course of conduct to that which they recommended. The consequences were that while the natives retained their opinion of the Missionaries, they found that the Resident was a nonentity, and that he was there to look on and nothing more."

As illustrating the class of difference which sometimes arose between the Resident and the Missionaries, and which must have appreciably hampered the activities of both, Captain Fitzroy stated to the Committee of the House of Lords that when he was at the Bay of Islands in 1835 there was then a serious difference between the real and the nominal head of the community, with respect to the stopping or discouraging the sale of ardent spirits. The Missionaries wanted to carry into effect a regulation similar to one established in the Society Islands, namely, that no spirits should be imported into the country. Mr. Busby would not be a party to such a rule, contending that it was an unnecessary measure; while the Missionaries, on the other hand, were unanimous in declaring it was one of the most useful precautions they could take, but no amount of argument could induce Mr. Busby to co-operate with them.[1]

[1] "After ardent spirits were introduced in the neighbourhood of Hokianga the Christian natives themselves became so sensible of the evils resulting from the use of them, that under the influence of the Missionaries the chiefs assembled and agreed to certain regulations, the effect of which was to prohibit the introduction and sale of ardent spirits. Those regulations received the sanction of the Governor of New South Wales, and were for a time partially carried into effect. Our Missionaries have transmitted a copy of the resolutions adopted at a meeting of the natives at Hokianga for the formation of a Temperance Society. Those resolutions were signed by fifteen native chiefs. One chief who was present declined for a time, but at length he agreed,

Mr. Busby at all times expressed the most profound respect for the Missionaries and veneration for their labours. He also cheerfully acknowledged that if the British Government expected them to accord their influence to its Representative they must be given a specified share in the government of the country. But when it came to a point of difference, he plainly let it be known that he considered himself possessed of a sounder judgment than they. After detailing to Governor Bourke a discussion in which he claimed to have got the better of the Missionaries, he wrote: "I thought they would naturally conclude in future that it was possible for the conclusions of a single mind, when directed to one object, to be more correct than the collective opinions of many persons whose minds are altogether engrossed with the multitude of details which fill up the attention of men, occupied as they are, leaving neither leisure nor capacity for more enlarged and comprehensive views."

Mr. Busby might have said more in fewer words, but he could scarcely have depreciated the mental powers of the Missionaries in a more delightfully prolix sentence. Skilfully, however, as the sting was sheathed within a cloud of words, the barb came through, with the not unnatural result that he had to confess the Missionaries afterwards neither respected his opinions nor appeared anxious to co-operate with him in what he described as "the furtherance of matters connected with the King's service in this country."

Though severely handicapped by his inability to co-ordinate his ideas with those of the Missionaries, or to sink his individuality before theirs, it does not follow that Mr. Busby was entirely idle. He lent himself with con-

---

and also signed them. Another chief remarked that it would be desirable that wine and porter should also be prohibited, for if they were allowed the English would say when the rum casks came that they were wine and porter, and by that means spirits would continue to be smuggled into the river. The later accounts give us reason to fear that notwithstanding these regulations spirits continued to be introduced there in defiance of the laws made by the native chiefs."—Rev. Dr. Beecham before Committee of House of Lords.

siderable industry to the task of placing the shipping of the country upon a basis more satisfactory than it had up to that time been. At the date of his arrival there were a number of New Zealand owned craft trading on our coasts, and several vessels were building on the Hokianga River. Sailing as these vessels were under no recognised register, and without the protection of the British ensign, which they were prohibited from hoisting, they were liable to seizure at any time by any enterprising pirate.[1] Equally impossible was it for these owners to register their craft in New Zealand, for there was as yet no acknowledged flag of the nation.

These facts were made the subject of representation by Mr. Busby to the Governor of New South Wales, who accorded a hearty approval to his suggestion that the commerce of the country warranted some protection of this nature. Flags of three separate designs were accordingly entrusted to Captain Lambert of H.M.S. *Alligator*, who brought them from Sydney and submitted them to the chiefs for approval.

This event took place at Waitangi, on March 20, 1834, the natives having been gathered from all the surrounding *pas* into a large marquee erected in front of the British Residency, and gaily decorated with flags from the *Alligator*. Wisely or unwisely the proceedings were not conducted upon the democratic basis of our present-day politics; for upon some principle which has not been made clear the tent was divided by a barrier into two areas, into one of which only the *rangatiras* were admitted, and to them the right of selection was confined. No debate was permitted, but Mr. Busby read to the chiefs a speech in which he dwelt upon the advantages to be anticipated from the adoption of a national flag, and then invited them to take a vote for the choice of design.

This mode of procedure created considerable dissatisfaction amongst the plutocracy of the tribes, who resented the doubtful privilege of being permitted to look

[1] The British Admiralty agreed to respect and protect the New Zealand ships' registers after the National flag had been hoisted.

on without the consequential right to exercise their voice. The stifling of discussion also tended to breed distrust in the minds of some of the chiefs, to whom the settlement of so important a matter without a *korero* [1] was a suspicious innovation. Two of the head men declined to record their votes, believing that under a ceremony conducted in such a manner there must be concealed some sinister motive. Despite these protests, the British Resident and Captain Lambert had their way, and at the conclusion of Mr. Busby's address, the flags were displayed and the electors invited to vote.[2] The great warrior chief Hongi, acting as poll-clerk, took down in writing the preference of each chief. Twelve votes were recorded for the most popular ensign, ten for the next in favour, and six only for the third. It was then found that the choice of the majority had fallen upon the flag with a white ground divided by St. George's Cross, the upper quarter of which was again divided by St. George's cross, a white star on a blue field appearing in each of the smaller squares.[2]

The election over, the rejected flags were close furled, and the selected ensign flung out to the breeze beside the Union Jack of Old England.

In the name of the chiefs Mr. Busby declared the ensign to be the national flag of New Zealand. As the symbol of the new-born nation was run up upon the halyards, it was received with a salute of twenty-one guns from the warship *Alligator*, and by cheers from her officers and the goodly crowd of sailors, settlers, and Missionaries who had assembled to participate in the ceremony.

As is usual with most such functions where Britons are

[1] *Korero* = talk, debate, discussion.

[2] Dr. Marshall, surgeon of H.M.S. *Alligator*, mentions that during his visit to the district he had become interested in a chief named Hau, who, prior to the voting, asked the Doctor for his opinion, on the designs. The Doctor favoured the one ultimately chosen, and Hau "having discovered how my taste lay, paid me the compliment of adopting it, and canvassed others for their votes also." This influence in all probability decided the election. After cession of sovereignty to the Queen in 1840 this flag was of course superseded by the Union Jack as a National ensign. It was then adopted by the Shaw Savill & Albion Shipping Company, and is now flown by them as their house flag.

concerned, the event was celebrated by a feast. The Europeans were regaled at a cold luncheon at Mr. Busby's house, while the Maoris had pork, potatoes, and *kororirori*[1] served upon the lawn in front of the Residency, which delicacies they devoured *sans* knives *sans* forks.

These proceedings subsequently received on behalf of the British Government the entire approbation of Lord Aberdeen;[2] and the countenance thus lent to what at the time was regarded as no more than a protection to the commerce of the country was discovered to have a most important bearing upon the question of Britain's sovereignty over these islands.

Though Mr. Busby found himself destitute of legal power or military force to make good his authority, and equally lacking in the tact necessary to secure by policy what he could not achieve by any other means, he was sincerely and even enthusiastically loyal to the main principle underlying his office—the preservation of British interests. Thus when the tidings came that Baron de Thierry intended to set up his kingdom at Hokianga, he took immediate and, as far as lay in his power, effective steps to defeat what he regarded as a wanton piece of French aggression.

Baron de Thierry was not a Frenchman in the narrow sense of the term, and his foreign associations were more imaginary than real. He was the son of a French noble refugee who had fled his country and had resided in England for many years. The Baron had been educated at Cambridge, had acquired English sympathies, and had

[1] *Kororirori* was a mixture of flour and water, sweetened with sugar, of which the natives had become very fond. While the feast was in progress word came that Pomare had arrived at the Bay at the head of a large armed party. Mr. Williams was sent to enquire why he had brought arms to a peaceable gathering? He replied, "It is New Zealand custom," and then added, "The *Rangatira* from the warships have their swords, and we ought not for shame to be without our guns," an observation which left little room for an effective rejoinder. Pomare, who was a great stickler for etiquette, was offended because he thought he had not been properly invited, and took this method of showing his displeasure. He was however soon placated by the Missionary.

[2] *Vide* his despatch of November 21, 1834.

been an officer in the 23rd Lancers, so that he was in sentiment if not by birth a subject of the King. When Hongi, the great Nga-Puhi chief, visited Cambridge in company with his compatriot Waikato and Mr. Kendall, to assist Professor Lee in the compilation of the Maori vocabulary, the Baron met the warrior chief, and became fired with the romance of the Pacific. There was much that was quixotic in his scheme of becoming a potentate amongst the savages of the South Seas, and it is possible it was not altogether devoid of benevolence.[1] There is at least reason to believe that Baron de Thierry had persuaded himself that he also had a mission for the uplifting of the benighted, and that when he arranged with Mr. Kendall to purchase him an area of land at Hokianga whereon he proposed to set up his "kingdom," he did so more in the spirit of philanthropy than of mercenary adventure. The area alleged to be purchased by Mr. Kendall on behalf of the Baron was the considerable one of 40,000 acres, and the price paid was the inconsiderable one of 36 axes. The transaction was accompanied by the usual misunderstanding as to the real nature of the deal, the Baron declaring that the axes were payment in full, the natives contending they were but a deposit, or at the best payment for a much smaller area.

The chiefs treated his "sovereign rights and powers" with undisguised derision. They disavowed his territorial claims because they were made regardless of the fundamental principle underlying the Maori law of property—that all the people who have an interest in the land must consent to its sale. Subsequently the matter was compromised by Tamati Waaka Nēne conceding him a small area,[2] to which he retired destitute of retainers, and surrounded only by the members of his own family.

The story of the Baron's landing in 1837, with much pomp and circumstance, under a salute of twenty-one guns, his dispute regarding Kendall's purchase, his final

[1] The Baron has been described as a crotchety enthusiast rather than a knavish schemer.

[2] Nēne gave him 5000 acres, which was subsequently reduced by quarrels and quibbles to 1000 acres.

disappearance into obscurity, are, however, of secondary importance to our purpose. What is of vital interest is that the announcement in 1835 of his approaching advent galvanised the British Resident and the native chiefs into a state of anxious activity. Living as they were on the confines of civilisation, their information concerning events outside their own little world was necessarily of the scantiest. Their fears were thus often greater than their knowledge of the facts, and so in this emergency they had no difficulty in persuading themselves that an invasion by the French was at hand.

As a counterblast, Mr. Busby counselled that the chiefs should immediately crystallise the position taken up by Britain—that New Zealand was not a British possession—by unequivocally declaring their own independence. His policy was approved, and for the purpose of giving effect to it, thirty-five chiefs assembled at Mr. Busby's house at Waitangi, where in the presence of the resident Missionaries and merchants they evolved the following declaration,[1] which brought into existence the much-questioned and questionable authority known as The Confederated Tribes of New Zealand.

It is not difficult to trace the Roman hand of the Resident throughout the document, especially as the Maori had no word in their language to express the idea of sovereignty; but it is only just to remark that in a subsequent despatch Mr. Busby drew the attention of Governor Bourke to the fact that the concluding paragraph, both in language and sentiment, originated with the chiefs:

DECLARATION OF INDEPENDENCE OF NEW ZEALAND

(1) We, the hereditary chiefs and head of the tribes of the Northern parts of New Zealand, being assembled at "Waitangi" in the Bay of Islands on this 28th day of October 1835, declare the independence of our country, which is hereby constituted and

[1] Sir George Gipps, Governor of New South Wales, in succession to Sir Richard Bourke, in a despatch dated August 1840, speaks of the Declaration, as entirely a measure of Mr. Busby's concoction, and designates it "a silly as well as an unauthorised act—a paper pellet fired off at the Baron de Thierry."

declared to be an independent state, under the designation of the United tribes of New Zealand.

(2) All Sovereign powers and authority within the territories of the United tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of the tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of Government to be exercised within the said territories unless by persons appointed by them and acting under the authority of laws regularly enacted by them in Congress assembled.

(3) The hereditary chiefs and heads of the tribes agree to meet in Congress at Waitangi, in the autumn of each year, for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade, and they cordially invite the Southern tribes to lay aside their private animosities, and to consult the safety and welfare of our common country by joining the confederation of the United tribes.

(4) They also agree to send a copy of this declaration to His Majesty the King of England, to thank him for his acknowledgment of their flag, and in return for the friendship and protection they have shown and are prepared to show to such of his subjects as have settled in their country, or resorted to its shores for the purpose of trade, they entreat that he will continue to be the parent of their infant State, and that he will become its protector from all attempts upon its independence.

AGREED unanimously on this 28th day of October 1835 in the presence of His Britannic Majesty's Resident.

English Witnesses:

HENRY WILLIAMS, Missionary C.M.S.
GEORGE CLARKE, " "
JAMES C. CLENDON, Merchant.
GILBERT MAIR, "

(Translated by the Missionaries and certified to by James Busby, British Resident.)

NAMES OF CHIEFS SIGNING DECLARATION OF INDEPENDENCE, October 28, 1835.

AWAROA.
HARE HONGI.
HEMI KEPA TUPE.
WARE POAKA.
WAIKATO.
TITORE.
MOKA.
WHARERAHI.
KEWA.
WAI.
REWETI ATUAHAERE.
AWA.
WIREMU TE TI TAUNUI.
TE NANA.
PI.
KAUA.
TAREHA.
KAWITI.

PUMUKA.
KE KEAE.
TE KAMARA.
POMARE.
WIWIA.
TE TAO.
MARUPO.
KOPIU.
WARAU.
NGERE.
MOETARA.
HIAMOE.
PUKUTUTU.
TE PEKA.
HONE WIREMU HEKE.
PAERARA.
ERERA PARE (te kai-tuhituhi).

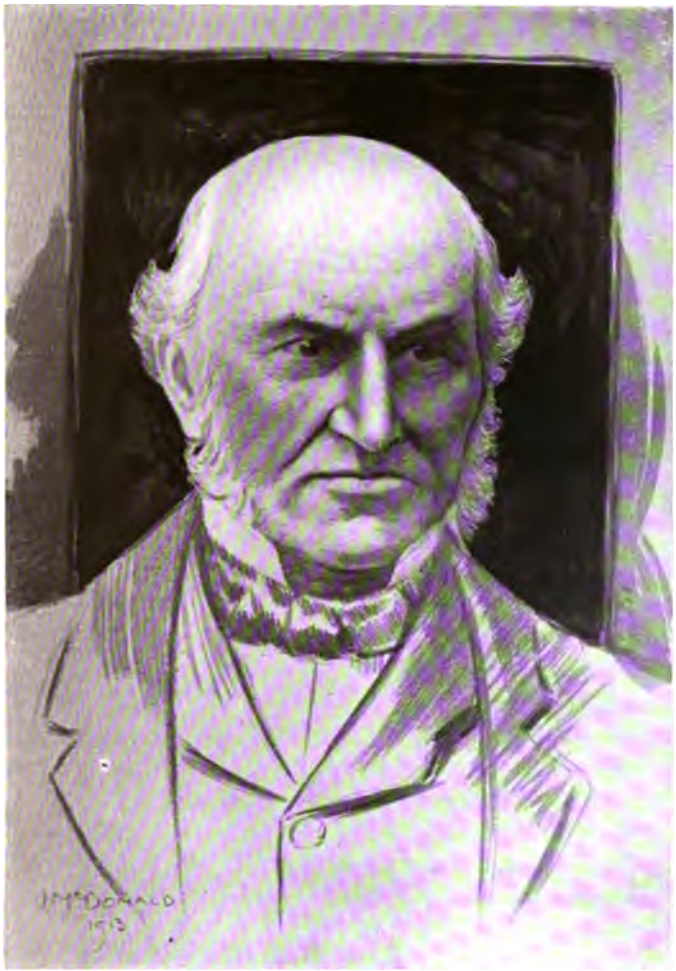
SUBSEQUENT SIGNATURES TO THE DECLARATION OF INDEPENDENCE

NĒNE (Tamati Waaka).
HUHU.
PATUONE.
PARORE, June 25, 1837.
TOWA.
PANAKAREAO (Nopera).
KIWI KIWI, Jan. 13, 1836.
TIRARAU, Feb. 9, 1836.
HAMUREA PITA, March 29, 1836.
TAWHAI.
MATE.
KAHA, June 25, 1837.
TE MORENGA, July 12, 1837.
MAHIA.
TAONUI, Jan. 16, 1838.
PAPAHIA, Sept. 24, 1838.
HAPUKU, Sept. 25, 1838.
TE WHEROWHERO, July 22, 1839.[1]

A few days prior to this meeting at Waitangi and the proclamation of their independence by the chiefs, Mr. Busby issued (on October 10, 1835) a stirring appeal to his scattered countrymen, in which he announced that he had received from "a person who styles himself Charles Baron de Thierry, Sovereign chief of New Zealand, and King of Nukuheva, one of the Marquesas Islands, a formal declaration of his intention to establish in his own person an independent sovereignty in this country, which intention he states he has declared to their Majesties the Kings of Great Britain and France, and to the President of the United States, and that he is now waiting at Otaheite the arrival of an armed ship from Panama to enable him to proceed to the Bay of Islands with strength to maintain his assumed authority. His intention is founded on an alleged invitation given to him in England by Shunghee (Hongi) and other chiefs, none of whom as individuals had any right to the sovereignty of the country, and conse-

[1] The chiefs who signed this document were thoroughly representative of the tribes residing between the North Cape and the latitude of the River Thames.

UNIV. OF
CALIFORNIA



JAMES BUSBY.

UNIV. OF
CALIFORNIA

quently possessed no authority to convey a right of sovereignty to another; also upon an alleged purchase made for him in 1822 by a Mr. Kendall of three districts on the Hokianga River from three chiefs who had only a partial property in these districts, parts of which are now settled by British subjects by virtue of purchase from the rightful proprietors. The British Resident has also seen an elaborate exposition of his views which this person has addressed to the Missionaries of the C.M.S., in which he makes the most ample promises to all persons, whether whites or natives, who will accept his invitation to live under his Government, and in which he offers a stipulated salary to each individual in order to induce him to act as his Magistrate. It is also supposed he may have made similar communications to other persons or classes of His Majesty's subjects, who are hereby invited to make such communications, or any information on this subject they may possess, known to the British Resident or to Lieutenant MacDonnell. The British Resident has too much confidence in the loyalty and good sense of his countrymen to think it necessary to caution them against turning a favourable ear to such insidious promises. He firmly believes that the paternal protection of the British Government which has never failed any of His Majesty's subjects, however remote, will not be withheld from them, should it be necessary to prevent their lives, liberties, or property from being subjected to the caprice of any adventurer who may choose to make this country, in which British subjects have now by the most lawful means acquired so large a stake, the theatre of his ambitious projects; nor in the British Resident's opinion will His Majesty, after acknowledging the sovereignty of the New Zealand chiefs in their collective capacity, by the recognition of their flag, permit his humble and confiding allies to be deprived of their independence upon such pretensions. But although the British Resident is of opinion that such an attempt as is now announced must ultimately fail, he nevertheless conceives that if such a person were once allowed to obtain a footing in the country, he might

acquire such an influence over the simple-minded natives as would produce effects which could not be too much deprecated, or too anxiously provided against, and he has therefore considered it his duty to request the British settlers of all classes to use all the influence they possess with the natives of every rank in order to counteract the efforts of any emissaries who may have arrived or may arrive amongst them, and to inspire both chiefs and people with a spirit of the most determined resistance to the landing of a person on their shores who comes with the avowed intention of usurping a sovereignty over them. The British Resident will take immediate steps for calling together the native chiefs in order to inform them of this attempt upon their independence, and to advise them of what is due to themselves and to their country, and of the protection which British subjects are entitled to at their hands, and he has no doubt that such a manifestation will be exhibited of the characteristic spirit, courage, and independence of the New Zealanders, as will stop at the outset such an attempt upon their liberties, by demonstrating its utter hopelessness."

It is somewhat difficult to say, in the absence of contemporary newspapers, what impression was created in the public mind by the Resident's proclamation or by the native Declaration of Independence, but in due course the latter was, in accordance with the unanimous desire of the chiefs, "laid at the feet of His Majesty," and in the following year—so tardy was communication in those days—it was courteously, but guardedly acknowledged by Lord Glenelg, who wrote to Governor Bourke:

"With reference to the desire which the chiefs have expressed on this occasion, to maintain a good understanding with His Majesty's subjects, it will be proper that they be assured, in His Majesty's name, that he will not fail to avail himself of every opportunity of showing his goodwill, and of affording to those chiefs such support and protection as may be consistent with a due regard to others, and to the interests of His Majesty's subjects."

Left to its own devices, the native Confederation was

faced with a task that proved altogether too exacting for its resources, and it cannot be claimed for the new authority that it remodelled the Government or reclaimed the dissolute society by which it was surrounded. Had it been possible to restrict the intercourse of the natives to the Missionaries and the more respectable portion of the settlers, they might, combined with the counsels of the Resident, have been speedily induced to form an effective administration amongst themselves, and that important stage once reached, they, with their quick intelligence, might have easily acquired a working knowledge of the higher principles of self-government. But thrust as they were in the midst of a strangely confused community, any such limitation was obviously impossible.

Even if it had been practicable, the irreconcilable differences which had sprung up between the Resident and the Missionaries, of which the natives were perfectly cognisant, necessarily detracted from the beneficial influence which an official in Mr. Busby's position might, and ought to have wielded.

The absence of the physical force which Mr. Busby pined for was unmistakably against the due observance of the ordinary decencies of life, for the people whom Captain Fitzroy had described as "ragamuffins," and Captain Hobson had still more emphatically condemned as "abandoned ruffians," were scarcely likely to be amenable to anything more gentle than the grip of the handcuff or the probe of the bayonet. It was therefore to but little purpose that the Confederation should pass ordinances which, if not respected, could not be enforced.

The difficulties of the Confederation accumulated with the increase of trade and population, both of which were growing rapidly. In the year 1836 no fewer than 93 British, 54 American, and 3 French ships put in at the Bay of Islands. The irregular settlement of white people at various spots along the coast had increased in like manner, until in the early part of 1838 a body of no less than 2000 British subjects had taken up their permanent abode in New Zealand. The part these people

were playing in the scheme of civilisation was still small, if we are to accept as accurate the verdict of Dr. G. R. Jameson, who in his *Travels in New Zealand* has taken the responsibility of saying that from all he had seen and heard respecting the fixed traders, or the casual visitors for trade, it could be affirmed in the most positive terms that not one of them had ever attempted to teach a native to read or write, or to communicate to his mind one ray of Christian knowledge or of moral rectitude. With a few honourable exceptions they had been in their intercourse with the natives guided by one ruling impulse—the love of gain. Their predominant aim was ever and always to obtain the greatest possible quantity of pigs, potatoes, flax, maize, labour, or land in exchange for the smallest possible amount of tobacco, ammunition, and piece-goods.[1]

It was not alone, however, by the criminal taint of a large section of the population and this excessive hunger for trade that the seeds of continued anarchy were sown. A new evil was at hand which threatened to sap the independence of the Maori, and reduce them to a condition of speedy and abject poverty. This was the land hunger which about this time seized the white population of Australia. There the opinion had gripped the public mind that under the Declaration of Independence it would be possible to pursue in New Zealand the schemes of land aggregation which Sir George Gipps had checked in New South Wales. Under his new land regulations the price of land in that colony had been raised from 3s. to 12s. per acre, and hearing that large areas were to be obtained in New Zealand for less than the proverbial song, the speculators swarmed over to the Bay of Islands, and in the year 1837 the land fever in all its phases of "sharking," "jobbing," and legitimate purchase literally raged throughout the country. "What gold was to the Spaniard in Mexico the land at this period became to the

[1] Dr. Jameson concludes his unalluring picture, by the statement: "It is to the Missionary labour only that we can justly attribute the abolition of infanticide, polygamy, and the atrocities of native warfare which have disappeared before the dawn of Christianity."

English in these islands, and as the warlike aborigines most coveted the acquisition of firearms, they divested themselves of their only possessions in order to obtain those deadly instruments, which, together with ardent spirits, were the most potent means for the destruction of their race. Almost every captain of a ship arriving in Sydney exhibited a piece of paper with a tattooed native head rudely drawn upon it, which he described as the title-deed of an estate bought for a few muskets, hatchets, or blankets."

Several years elapsed before it was possible to reduce these frenzied bargains to tabulated form, but during the debate on New Zealand affairs, which occupied the House of Commons for three days in 1845, the representative for Westminster, the Hon. Captain Rous, R.N., put forward the following startling figures as authentic. A Mr. Webster, an American, he said, claimed to have purchased forty miles of frontage on the west side of the river Piako;[1] a Mr. Painham claimed nearly the whole of the north coast of the Northern Island. Mr. Wentworth of New South Wales asserted his right to 20,100,000 acres in the Middle Island; Catlin & Co. to 7,000,000; Weller & Co. to 3,557,000; Jones & Co. to 1,930,000; Peacock & Co. to 1,450,000; Green & Co. to 1,377,000; Guard & Co. to 1,200,000, and the New Zealand Company to 20,000,000.

Yet another authority has stated that the whole of the South Island was claimed by a Company consisting of four gentlemen, in consideration of giving the chiefs a few hundred pounds in money and merchandise, and a life annuity of £100.[2] Another individual, representing a commercial firm in Sydney, claimed several hundred thousand acres, including the township of Auckland, for which he paid as compensation one keg of gunpowder. The island of Kapiti was claimed by five different parties, each declaring they had purchased it, but each naming

[1] This claim is still the subject of negotiation between the British and United States Governments.

[2] Probably the Wentworth Purchase.

a different price. Some alleged they had paid £100, others goods to the value of £30, and so on, the only point of unanimity being that they were each able to produce something that resembled the signatures of Te Rauparaha or Te Rangihaeata.

In much the same way the district round Porirua was claimed by eight separate parties, each contending that Te Rauparaha had sold to them, and to them alone. Cooper, Holt & Rhodes of Sydney asserted they had paid merchandise to the value of £150 for a tract of country between the Otaki and Waikanae Rivers, running in an easterly direction forty miles from the mouth of the river, thirty miles in another direction, and ten miles along the coast. Mr. John Hughes, also of Sydney, claimed in part all the lands of Porirua for a distance of thirty miles, bounded by the sea on the one hand, and by the Tararua Range on the other.

In the general censure which followed upon the disclosure of these unseemly proceedings the Missionaries did not escape criticism, and are still, at times, subject to severest strictures on this question, as it affects public morals. Unjust as these strictures frequently are the purchase from Hongi, in 1819, of 13,000 acres at Kirikiri for forty-eight axes, by the Rev. Samuel Marsden,[1] was one amongst other transactions which on the face of it seems to leave room for the gravest enquiry as to its propriety.[2]

If the Confederation of chiefs had been helpless in the face of social disorder, it was still more impotent to cope

[1] The deed confirming this transaction is now in the Hocken Collection at Dunedin.

[2] "The Missionaries have been successful, but I think a greater effect might be given to them if their minds were relieved from those secular things which press upon them on behalf of their children. If they could devote their lives to the service of Christianity instead of trying to better the condition of their own children. At present they are cultivating their land. To use the words of the Rev. Henry Williams—They are just holding on for their children, seeing no other prospect for them than the cultivation of those lands. They cannot send them home to England, for that would be too expensive; New South Wales would not be desirable for them, and this is their only chance."—Evidence of Mr. John Flatt (formerly a catechist of the C.M.S.) before a Parliamentary Committee.

with the inroads of the speculator. The greed for land on the part of the *Pakeha*, and the hunger for muskets on that of the Maori, rendered futile all attempts to control the traffic by an already effete administration. The need for a wider application of authority and efficient Government at length found voice in a petition which was submitted to the King by the law-abiding settlers at Kororareka. The settlers, catechists, and Missionaries to the number of one hundred and ninety-two, headed by the Rev. Henry Williams, Chairman of the Church Mission, joined in the plea for protection.

During the course of their representations they made it clear that the attempt to evolve order out of chaos had utterly failed; that the Confederation of Chiefs was impotent in the face of existing evils; and, praying that His Majesty would graciously regard the peculiarity of their position, asked that he would afford them such relief as to him seemed most expedient.

TO THE KING'S MOST EXCELLENT MAJESTY

SIRE—May it please Your Majesty to allow your faithful and loyal subjects at present residing in New Zealand to approach the throne, and crave your condescending attention to their petition which is called forth by their peculiar situation.

The present crisis of the threatened usurpation of power over New Zealand by Baron Charles de Thierry, the particulars of which have been forwarded to Your Majesty's Government by James Busby, Esquire, the British Resident, strongly urges us to make known our fears and apprehensions for ourselves and families, and the people amongst whom we dwell.

Your humble Petitioners would advert to the serious evils and perplexing grievances which surround and await them arising for the most part, if not entirely from some of Your Majesty's subjects, who fearlessly commit all kinds of depredations upon other of Your Majesty's subjects who are peaceably disposed. British property in vessels, as well as on shore, is exposed without redress to every imaginable risk and plunder, which may be traced to the want of a power in the land to check and control evils, and preserve order amongst Your Majesty's subjects.

Your Petitioners are aware that it is not the desire of Your Majesty to extend the colonies of Great Britain, but they would call Your Majesty's attention to the circumstance of several of Your Majesty's subjects having resided for more than twenty

years past, since which their numbers have accumulated to more than five hundred, north of the River Thames alone, many of whom are heads of families. The frequent arrival of persons from England and the adjacent colonies is a fruitful source of further augmentation. Your Petitioners would therefore humbly call Your Majesty's attention to the fact that there is at present a considerable body of Your Majesty's subjects established in this Island, and that owing to the salubrity of the climate there is every reason to anticipate a rapidly rising colony of British subjects. Should this colony continue to advance, no doubt means would be devised whereby many of its internal expenses would be met as in other countries. There are numbers of land-holders, and the Kouri (Kauri) forests have become, for the most part, the private property of Your Majesty's subjects.

Your humble Petitioners would also entreat Your Majesty's attention to the important circumstance that the Bay of Islands has long been the resort of ships employed in the South Sea fishery and the Merchant Service, and is in itself a most noble anchorage for all classes of vessels, and is further highly important in affording supplies and refreshment to shipping. There are also several other harbours and anchorage of material importance to the shipping interests in situations where British subjects have possessions and property to a large amount. The number of arrivals of vessels in the Bay of Islands during the last three years has been considerably on the increase. At one period thirty-six were at anchor, and in the course of six months ending June 1836 no less than one hundred and one vessels visited the Bay.

Your Petitioners would further state that since the increase of the European population several evils have been growing upon them. The crews of vessels have frequently been descryed on shore, to the great detriment of trade, and numberless robberies have been committed on shipboard and on shore by a lawless band of Europeans, who have not even scrupled to use firearms to support them in their depredations. Your humble Petitioners seriously lament that when complaints have been made to the British Resident of these acts of outrage, he has expressed his deep regret that he has not yet been furnished with authority and power to act, not even the authority of a civil Magistrate to administer an affidavit.

Your humble Petitioners express with much concern their conviction that unless Your Majesty's fostering care be extended towards them, they can only anticipate that both Your Majesty's subjects and also the aborigines of this land will be liable in an increased degree to murders, robberies, and every kind of evil.

Your Petitioners would observe that it has been considered that the confederate tribes of New Zealand were competent to enact laws for the proper Government of this land, whereby

protection would be afforded in all cases of necessity; but experience evidently shows that in the infant state of the country this cannot be accomplished or expected. It is acknowledged by the chiefs themselves to be impracticable. Your Petitioners therefore feel persuaded that considerable time must elapse before the chiefs of this land can be capable of exercising the duties of an independent Government.

Your Petitioners would therefore pray that Your Majesty may graciously regard the peculiarity of their situation, and afford that relief which may appear most expedient to Your Majesty.

Relying upon Your Majesty's wisdom and clemency we shall ever pray Almighty God to behold with favour and preserve our Gracious Sovereign.

CHAPTER II

SEEKING A WAY

THE cry for better Government was thus becoming imperative, and the demand was not a new one. Both the House of Lords and the House of Commons had entered upon exhaustive enquiries into the subject. The former had reported that the responsibility of extending the colonial possessions of the Crown was one that rested solely with the Government, while the latter had declared in spirited terms that "however pressing the nation's need for a vigorous emigration policy, and whatever action the Government might take to meet that need by finding a soil to which its surplus population might retreat, the House would tolerate no scheme which implied violence or fraud in taking possession of such territory." The reference to "surplus population" in the House of Commons' report introduces a new factor into the problem. It indicates internal as well as external pressure; it tells of clamour from the teeming cities, and a rural population discontented with their lot. It suggests that the nation's mind had moved faster than the politicians, and that already many of England's artisans were seeking to escape to some new country where they might live under freer conditions. The popular theory of the political economists of those days was "over population," and the panacea for the existing national poverty was emigration. In spite of the fact that people are the most precious asset a country can ever have, both doctrines found much favour with the different sections of the community whose interest they seemed best to serve; the spirit of colonisa-

tion had got into the air, and the question of finding new fields for the energies of the "surplus" people became a practical issue which no Government could afford to ignore. The necessity for doing something appeared impossible of evasion. Poverty at home and crime unchecked abroad clamoured for redress, but just what to do, or how to do it, was not easy of decision.

Sir Richard Bourke had told the Government in plainest terms that unless they were prepared to give the British Resident more power, and permanently station a ship of war on the coast to support him, it would be more in keeping with the dignity of the nation to withdraw him altogether. To give him more power was an impossibility, unless the Government was prepared to violate the express injunction of the House of Commons and all the precedents by which they had acknowledged the independence of the Maoris. It was therefore not practicable to supply the existing deficiency by extending the jurisdiction of Mr. Busby.

In their dilemma the Ministers turned for light and leading to the comparatively few people then in England who had previous experience of these far-away islands. Amongst these was Captain Hobson, who in 1837 had been sent over in H.M.S. *Rattlesnake* pell-mell to render what aid he could to British shipping and British interests generally, on news reaching Sydney of serious hostilities between two of the northern tribes.[1] Captain Hobson had on his return furnished the Governor with a report upon the condition of affairs as he found them at the settlements he had visited. He had also entered into the discussion of a scheme for the future government of the country, in which he favoured proceeding upon the plan of the Hudson Bay and East India Companies by establishing trading factories in different parts of the islands,

[1] This war, it is said, arose through some one on board the *Roslyn Castle* carrying off a native woman of high rank to sea. Her friends at Kawakawa accused the people of Kororareka of killing and eating her in satisfaction of an old feud. This they denied, but a war ensued, 1500 fighting men being engaged, the war continuing for several months, eighty being killed.

and so fulfilling what he urged had become a solemn duty to apply a remedy for a growing evil. "It has occurred to me," he wrote, "that if factories were established at the Bay of Islands, at Cloudy Bay, and Hokianga, and in other places as the occupation by British subjects proceeds, a sufficient restraint could be constitutionally imposed on the licentious whites, without exciting the jealousy of the New Zealanders or of any other power. I will not presume to enter too deeply into the details of such a measure, but beg simply to suggest that sections of land be purchased, enclosed, and placed within the influence of British jurisdiction as dependencies of this (New South Wales) colony. The heads of factories should be Magistrates, and the chief factor should, in addition, be accredited to the united chiefs of New Zealand as a political agent and consul. All communications with the British Government should take place through the chief factor, with whom alone the local factors should correspond. All British subjects should be required to register themselves and their landed property at the factories. Two or more respectable British residents nearest to each station should hold Commissions of the Peace to assist the factors. Prisons should be constructed within the factories and legally proclaimed in the colony. A treaty should be concluded with the New Zealand chiefs for the recognition of the factories and the protection of British subjects and property. To meet the expenses which the establishment of a system of factories upon the principle I have mentioned would necessarily entail, funds might be obtained from a variety of sources, such as a small fee on the registration of the purchase of land from the natives, on the entry and clearance of British shipping, and a small percentage on goods and produce imported and exported. The great security which would result from this system would, it is conceived, readily dispose the British subjects resident in New Zealand, to conform to such an impost."

After acknowledging the primary need for Imperial legislation to give effect to his suggested policy, he con-

tinues: "The benefit which may be supposed to arise from the establishment of factories in New Zealand is not confined to the mere legal protection they are supposed to afford; but we may hope they will be the means of introducing amongst the natives a system of civil Government which may hereafter be adopted and enlarged upon. Nor is it to be overlooked that in times of intestine war they will afford a safe retreat to our fellow-countrymen, who will then become powerful by concentration."

In the estimation of Sir Richard Bourke, Captain Hobson's scheme contained "suggestions of great value," and in transmitting it to the Colonial Office he not only gave it his full endorsement, but justified it because it was in his opinion "neither possible nor desirable to put a stop to the growing intercourse between the English colonies in these seas and New Zealand." He also raised his voice against the neutral policy which was being pursued, for while admitting the failure of the British Residency, he protested that "it would be difficult for His Majesty's or this Government to act for any length of time upon the stern principle of non-interference if the lives and property of British subjects appeared to be in jeopardy. Any plan, therefore, by which the intercourse may be sufficiently regulated, and usurpation, real or apparent, avoided, is well worthy of serious consideration."

Simultaneously with Captain Hobson's scheme, was sent a letter from Mr. Busby, written while the *Rattlesnake* was in New Zealand waters. In this communication the Resident also endeavoured, for the guidance of Ministers, to reduce to a system a scheme of government based upon his several years' experience of the people and the country. Governor Bourke evidently looked upon it with a less favourable eye than he did upon the report of the naval officer, and commended it merely as advancing "suggestions that were not without value."

This letter must, however, be regarded by all historians as the more valuable of the two, for in it will be found the germ of the treaty which was afterwards adopted by both *Pakeha* and Maori as the basis upon which New

Zealand was taken into the British Empire; upon which her past progress has been built, and her future prosperity must depend.

In the previous year (1836) Mr. Busby had made a somewhat similar suggestion, founded upon the principle sanctioned by the Treaty of Paris in the case of Great Britain and the Ionian Isles, and also applied in various instances on Britain's Indian frontier. That principle recognised "a protecting state administering in chief the affairs of another State in trust for the inhabitants," and this condition he claimed could be, with but slight modification, applied to New Zealand both economically and efficiently. Mr. Busby was by no means of the opinion, afterwards so contemptuously expressed by Sir George Gipps, that the native Declaration of Independence was "a paper pellet fired off at Baron de Thierry." On the contrary, he attached considerable importance to it, proposing to make it the authority on which the chiefs were entitled to enter into diplomatic relations with Great Britain for the cession of their administrative rights.

"The chiefs who were parties to the articles of Confederation, and to the Declaration of Independence," he wrote, "together with those who subsequently adhered to it, include, with very few exceptions, the whole of the chiefs of influence in the northern parts of the Islands, and the adhesion of the remainder could at any time be procured. Whatever acts approaching to acts of sovereignty or government have been exercised in the country, have been exercised by these chiefs in their individual capacity, as relates to their own people, and in their collective capacity as relates to their negotiations with the British Government, the only Government with which the chiefs or people of New Zealand have had any relations of a diplomatic character. The articles of Confederation having centralised the powers of sovereignty both *de jure* and *de facto* by the several chiefs, and having established and declared the basis of a constitution of government founded upon the union of those powers, I cannot, I

think, greatly err in assuming that the congress of chiefs, the depositing of the powers of the State, as declared by its constitution, is competent to become a party to a treaty with a foreign power, and to avail itself of foreign assistance in reducing the country under its authority to order, and this principle being once admitted all difficulty appears to me to vanish."

It did not, however, enter into the proposal of Mr. Busby that the British Government should be both in theory and in fact the administrative authority. He still contemplated the retention of the federated chiefs as the nominal source of power, with himself as its presiding genius. "In theory and ostensibly the government would be that of the confederated chiefs, but in reality it must necessarily be that of the protecting power. The chiefs would meet annually, or oftener, and nominally enact the laws proposed to them, but in truth the present race of chiefs could not be entrusted with any discretion whatever in the adoption or rejection of any measure that might be submitted to them."

He proposed to constitute the chiefs guardians of the peace and public morals, and to pay them for their services. Schools were to be established, and the Missionaries and catechists were, as far as their duties would permit, to be appointed Justices of the Peace, whose decisions were, if needs must, to be supported by a military force. Even a periodical newspaper was provided for as a means of "instructing the natives in those relative duties of the people and their rulers, which are familiar to all ranks of the population under established Government, but of which the New Zealanders have scarcely yet formed an idea." Revenue was to be raised by an impost on shipping and a duty upon spirits and tobacco. Indeed, so modest was his contemplated civil establishment that he estimated an expenditure of not more than £1000 per annum would be sufficient to maintain it in adequate splendour. All existing land claims were to be settled by an independent commission, and after that all titles were to be void unless procured through the Government,

whose special duty it would be to see that ample reserves were retained for the natives.

Mr. Busby, in submitting these proposals, ventured to suggest that they might be presumed to give an effective degree of protection to the British subjects resident in New Zealand, without infringing on the rights of the New Zealanders as an independent people and at the same time " satisfy the reasonable scruples of a foreign Government." This latter condition was one that in maturing their plans the British Cabinet could not leave out of their consideration ; for already both France and America were factors to be counted upon in the South Pacific, and might with almost equal justice claim a share in the sovereignty of the country.

The Government were still wrestling with the perplexities of the position when the New Zealand Association rose into being, and served to still further complicate the issues. There was an opinion in political circles, afterwards crystallised into a definite recommendation by the House of Lords, that the colonisation of New Zealand was the duty of the State, if it was Britain's duty at all, but private enterprise had never been wholly disassociated from the scheme.[1] As far back as 1825 a New Zealand Company, " acting with the sanction and encouragement of the Government," had been formed under Lord Durham, and had acquired an estate on the banks of the Hokianga

[1] In 1821 Mr. Henry Goulburn, by direction of Earl Bathurst, informed R. M. Sugden that his Lordship " did not feel he had any power of approving any particular encouragement to the establishment of a colony in New Zealand." In 1822 Earl Bathurst informed Thomas England and Messrs. Taylor and Upton that no encouragement was given by the Government to settlers to proceed to New Zealand. In the same year Mr. John Thomson, A.M., Edinburgh, offered to found a colony of 50 sober men, 100 Sepoys, and 100 convicts, as " the inhabitants of New Zealand are just in that state of civilisation to be made useful." In November 1823 Lieutenant-Colonel Nicolls, an ex-Indian officer, made a proposal to Earl Bathurst to establish a colony of military pensioners. In the following month Baron de Thierry's scheme was brought under the notice of the Government. The year 1825 saw the first New Zealand Company established. Colonel R. Torrens, who afterwards did such good work in South Australia, applied in 1826 for the command of a military force in New Zealand, and so enable him to " make preliminary arrangements which would facilitate the future colonisation of these islands upon sound economical principles."

River. This settlement, under Captain Heard, had been of the most fugitive character; but the land still remained more or less an asset, and subsequently was acquired by the New Zealand Association, founded in 1837 by the Hon. Francis Baring, M.P. for Sheffield, in conjunction with other gentlemen prominent in English public life of that day. This Association grew out of an enquiry made at the instance of the House of Commons by a committee called the Committee on Colonial Lands, but the real subject of the enquiry was colonisation. One of the principal witnesses was Mr. Edward Gibbon Wakefield, who gave some account of the then existing state of New Zealand, and spoke of it as a country extremely eligible for the purpose of British colonisation, provided some regular system should be adopted in place of the lawless practices that were then rampant. In consequence of that statement, a member of the committee spoke to him upon the subject of colonising New Zealand. Subsequently other gentlemen were admitted to their discussions, and as a result of their joint deliberations they determined to form an Association for the purpose of obtaining from Parliament (for Parliamentary aid was considered essential) some regulation both for the colonisation and the government of the Islands, to take the place of the irregular practices that were then on foot.

There is little doubt that in its inception the Association had a large measure of philanthropy underlying its principles, for it was the outcome of the unsatisfactory social conditions existing in England at that period. The scheme attracted to its aid men of wealth and culture, and under the organising genius of Edward Gibbon Wakefield it acquired an influence, both social and political, which no government could safely regard with indifference.[1]

To secure New Zealand as a British possession; to find a profitable investment for British capital; and to provide employment and opportunity for England's idle

[1] It was said that at one period of its existence the New Zealand Association could command 42 votes in the House of Commons.

labour were the nominal objects for which the Association had been formed. To give these purposes practical effect the Association had, under the guiding hand of Wakefield, formulated definite theories upon the subject of colonisation; and to the end that their ideals might be achieved they sought the assistance of the Government and the sanction of Parliament.

On a day in June 1837 they secured an interview with the Prime Minister, Lord Melbourne, whom they found attended by Lord Howick, a member of the Government, though not of the Colonial Office, and who was present, so they were told, in the character of an adviser on the subject, he having paid considerable attention to colonial problems. The aims and purposes of the Association were laid before the Ministers by Mr. Baring, chairman of the society, and the result of the deputation was an assurance from the Premier that for himself he saw no objection to the scheme of the Association, and that he perceived in some of their purposes a laudable object, but that not being familiarly conversant with such subjects he did not care to do more than to express his general approbation, and to refer the deputation for the discussion of all matters of detail to Lord Howick, who was well informed on all such questions, and who possessed, in the office which he held, as much leisure as would enable him to attend to the subject. The committee was highly satisfied with their interview, and communicated in various ways with Lord Howick upon the details of their plan, amongst other things submitting to him a draft of the Bill which they proposed to introduce into the House of Commons. Lord Howick examined the Bill, and both in conversation and in writing suggested various modifications, which though not universally approved by the promoters, were adopted in their entirety rather than risk the loss of that influence which they considered essential to the success of their plan—the assistance of the Executive Government. The death of the King, William IV., at this juncture, put a sudden termination to their political proceedings; but the outlook for their negotiation appeared

so satisfactory that, pending the assembly of the new Parliament, they published an invitation to all persons so disposed to join the Association for the purpose of emigrating to New Zealand. The publication of this resolution drew to their ranks a large body of wealthy and influential people; and when Parliament met again in December of the same year a very considerable number of persons had expressed their intention of settling in the new colony. Accordingly the committee, on December 13, again waited on Lord Melbourne with a view to obtaining his final approval upon the measure which they proposed to submit to the Commons. As at the previous interview, the object of the Association in seeking this second conference was stated by Mr. Baring, when Lord Melbourne, who appeared to have forgotten what had passed on the former occasion, referred the deputation to Lord Glenelg, who was present as Colonial Minister.

This gentleman at once adopted an attitude of hostility to the whole proposal, his objections being primarily that the jealousy of foreign powers might be excited by the extension of British colonies; that England had colonies enough; that they were very expensive to govern and to manage; and that they were not of sufficient value to make it worth while to increase their number.[1] The rebuttal of these unexpected objections involved a discussion of over an hour, during which considerable feeling was displayed by some of the gentlemen present, who saw in the attitude of the Minister a grim prospect of their scheme being thwarted. Several of these had, during the interval since the previous interview, disposed of their property and quitted professions in which they were engaged, with a view to emigrating, and they now felt very strongly the position in which they were placed by the withdrawal of the Ministerial approval which they believed their enterprise was to receive. One of these was described to Lord Melbourne as having wound up his affairs with a view to emigrating, and as being likely

[1] Lord Glenelg did not on this occasion urge as an objection that New Zealand was not a part of the British Empire.

to suffer very seriously from now finding himself unable to carry his plan into effect. Lord Melbourne, not knowing that he was present, said that such an individual must be mad. The gentleman immediately rose and, facing the Premier, said that he was the madman. This created a distinctly dramatic situation, and the conference was on the point of breaking up in excitement and disorder when Lord Melbourne was reminded of his former sympathetic reception of the Association's proposals, whereupon he held a further brief consultation with the leaders of the deputation, and gave them to understand that the matter would be again considered by the Government, and that if they would wait upon Lord Glenelg in a week's time they would get an answer more to their satisfaction. Pursuant to that arrangement, the same body of persons waited on the Colonial Secretary on that day week (Wednesday, December 20), when Lord Glenelg informed them that the subject of the colonisation of New Zealand had been reconsidered by the Cabinet, and that circumstances which had occurred during the interval had induced Ministers to think that their former view was not the correct one. What had happened to so influence the Ministerial mind was the receipt of those important despatches from Mr. Busby, the British Resident, and from Captain Hobson, in which both these officers urged the need for a more vigorous policy on the part of the Colonial Office in its relations with New Zealand. The opinions of the Government, therefore, now approximated somewhat more closely to those of the Association, but there was still some hesitancy in proceeding by way of Act of Parliament. The Colonial Department, Lord Glenelg said, had fully considered the matter, and were satisfied that the measures desired might be carried into complete effect without applying to Parliament at all; and that they were consequently prepared, in the exercise of the power of the Crown vested in the Secretary of State for the Colonial Department, to give to the Association a Charter of Incorporation, being a Charter of government similar to those which were granted in the sixteenth and

seventeenth centuries to the companies which founded the thirteen great colonies in America. Nine days after this interview the Association received an official letter from Lord Glenelg, reiterating his offer of a Charter, and calling upon the committee to form their members into a Joint-Stock Company with a subscribed capital sufficient to qualify them for the Charter he proposed to issue. This proposition was wholly unacceptable to the Association for two vital reasons. They had from the beginning declared that they intended to take no private pecuniary interest in the undertaking, and yet in spite of their care in this direction they had been very untruly charged before the public with having no other object than that of private pecuniary gain for themselves. Again some of their most influential leaders were persons, such as distinguished clergymen of the Established Church, holding preferment, who were almost disqualified by that circumstance from becoming members of a Joint-Stock Company, and, therefore, it was unanimously resolved that the offer of the Colonial Secretary could not be accepted. But though this avenue of procedure was closed there was still another open to them, and it was determined to procure, if possible, the passage of a Bill through Parliament, based upon the plan which they had originally placed before the Government. Such a Bill was brought into the House of Commons by Mr. Baring, but owing to the opposition of the Ministers, including Lord Howick,[1] and the widespread impression that the Association was nothing better than a land-sharking Company, the measure was defeated by a large majority.

The discussion which was provoked by this Bill was responsible for concentrating public attention upon two points, namely, the objects which animated the Association, and, secondly, the diversity of opinion which existed on the subject of British sovereignty in New Zealand. One of the most ardent advocates of the Association was the Rev. Dr. Hinds, a clergyman of the Established

[1] After the Association was formed into a Company Lord Howick became one of its most ardent supporters.

Church, who had been greatly impressed by the social stagnation in England, and who had joined the committee in the hope of providing some outlet for the country's allegedly "surplus" population. Dr. Hinds told the Committee of the House of Lords in 1838 [1] that he considered the colonisation of New Zealand expedient because of the number of persons of various classes in Great Britain who were anxious to settle themselves in a colony in New Zealand; persons who from their character, station, and other considerations, had a claim on the British Parliament to facilitate that object. The feeling, he assured their Lordships, in favour of such a colony was deep seated and sincere, supporting his contention by quoting letters he had received from Scotland,[2] where, he said, existing conditions were clamant for an immediate remedy. That remedy, he contended, the colonisation of New Zealand would supply. "There is," he said, "an abundance of capital and an abundance of labour in Great Britain, and the abundance of capital the capitalists can hardly employ so as to be sufficiently remunerative by any investment in this country. At the same time there is a great mass of the labouring population who can no longer obtain sufficient wages to keep up what have become the necessaries of life to them. The proposed colony would therefore be a measure of relief to both the capitalists and labourers."

Dr. Hinds concluded his instructive picture of social England at that date by urging the colonisation of New Zealand on the general ground that settlement was already

[1] A select Committee of the House of Lords was set up in 1838 "to enquire into the present state of the Islands of New Zealand and of the expediency of regulating the settlement of British subjects therein."

[2] "It was only within the last three months that I received a letter from Paisley, stating that if a colony were formed in New Zealand on the principles laid down in our publication in that neighbourhood alone there were a hundred respectable persons—indeed I am not sure the expression was not 'respectable families,' but I have not the letter with me—who would emigrate immediately" (Dr. Hinds before the House of Lords Committee). Mr. G. S. Evans, LL.D., in his evidence stated there was an Association in the West of Scotland consisting of 200 members, and another in the Carse of Gowrie consisting of at least 100 persons, all anxious to emigrate to New Zealand.

UNIV. OF
CALIFORNIA

LORD NORMANBY.

UNIV. OF
CALIFORNIA

proceeding there along irregular lines, and without any "combining principle." This fundamental requirement to all well-ordered societies, he thought, was provided for in the plan of the Association, and he proceeded to explain in very explicit terms the two cardinal points of its constitution—its Government, and the principles which would control its land transactions.

The executive authority of the Association was, he said, to be placed in the hands of a Commission resident in England, which Commission was to be merely a provisional body to last so long as might be thought necessary to set the scheme on foot. It was proposed to delegate to these Commissioners the power to make laws, the Crown to determine the extent of the delegation, and many other important matters. A further power of delegation was to be given to a Council in New Zealand, but the responsibility for all that was done was to rest with the Commission at home. "Whatever the powers are, it is only required that they should be exercised for a period of twenty-one years, and the Association would not at all object if it should seem desirable to have the time shortened. At the end of that term the whole Government of the colony would revert to the Crown."

In its land dealings, the element of profit was to be eliminated by the fact that the whole of the money derived from the sale of land or other sources must be spent in the interests of the colony, and no member was to derive any advantage therefrom: "The money for which the land will be sold by the Commissioners will be a price made up of several sums. It will in the first place contain the sum paid for the land itself, which I conceive will be a very small proportion. It will contain then a sum which will be calculated as sufficient for bringing out labourers to cultivate the land purchased; that will be the largest amount. It is also proposed that there should be a further sum added for the purpose of making roads, bridges, and public works, and it is also proposed that one of the items should be a sum to be expended in making provision for the natives, such as

procuring them medical assistance and some instruction in the arts. The price the settlers will pay for the land will be only the price paid for it to the natives, and the additions to that sum will be in fact the purchase money paid for certain benefits which are considered essential to the prosperity of the colony, more especially for a due supply of labour."

The House of Lords' Committee reported against this scheme on the broadly Imperial grounds that the extension of the colonial possessions of the Crown was a question of public policy with which the Government only should deal. The element of private enterprise was, in their Lordships' opinion, eminently undesirable, holding with Captain Fitzroy, whose personal experience they valued, that " colonisation to be useful must be entirely under the control of the Executive Government of the Mother Country."

At this point a new and vigorous opponent directed its energies against the plans of the Association. The Church Missionary Society had been watching its proceedings with a jealous eye, and from the moment of the Association's inception had adopted an attitude of hostility towards it. Rightly or wrongly the Society had conceived the notion that the colonisation of the country must have a detrimental effect upon its Missions, and that therefore a sacred duty devolved upon the Committee to frustrate its consummation if it were at all possible so to do.

Immediately following the publication of the Association's prospectus the Society had communicated with its Missionaries in New Zealand, calling their attention to the scheme, and urging them to furnish the Committee with their views upon it, and so assist the parent body in reaching a conclusion as to its merits. Without waiting for these replies the Committee proceeded to deliberate upon the evidence then available, and on June 6, 1837, formulated the following resolutions, which they ever afterwards consistently made the basis of their attitude towards the Association.

That the New Zealand Association appears to the Committee highly objectionable on the principle that it proposes to engage the British Legislature to sanction the disposal of portion of a foreign country over which it has no claim to sovereignty or jurisdiction whatever.

That the Association is further objectionable from its involving the colonisation of New Zealand by Europeans, such colonisation of countries inhabited by uncivilised tribes having been found by universal experience to lead to the infliction upon the aborigines of great wrongs and most severe injuries.

That the Committee consider the execution of such a scheme as that contemplated by the Association especially to be deprecated in the present case, from its unavoidable tendency, in their judgment, to interrupt if not to defeat, those measures for the religious improvement and civilisation of the natives of New Zealand, which are now in favourable progress through the labours of the Missionaries.

That for the reasons assigned in the preceding resolutions the Committee are of opinion that all suitable means should be employed to prevent the plan of the New Zealand Association from being carried into execution.

The Society again made declaration of its views in the following year, embodying in its annual report (May 1, 1838) a plea for the humane consideration of New Zealand's claims, and for their own disinterested services to the country:

Your Committee cannot close this report on the New Zealand Mission without adverting to the peculiar situation of that country as it is regarded by the public at large. What events may await this fair portion of the globe, whether England will regard with a sisterly eye so beautiful an Island, placed like herself in a commanding position, well harboured, well wooded, and fertile in resources; whether this country will stretch forth a friendly and vigorous arm, so that New Zealand may with her native population adorn the page of future history as an industrious, well-ordered, and Christian nation, it is not for the committee of the Church Missionary Society to anticipate—but this consolation they do possess. They know that the Society has for the past twenty years done good to the natives, hoping for nothing again, nothing save the delight of promoting the Glory of God and good-will among men. The Society has sent forth its heralds of peace and messengers of salvation, and has thus contracted such an obligation towards those whom it has sought to benefit that your Committee are constrained to lift up their voice on behalf of that Island, and to claim that no

measures shall be adopted towards that interesting country which would involve any violation of the principles of justice on our part, or the rights and liberties of the natives of New Zealand.

The Society having once determined upon its attitude towards the Association never turned back. Their Secretary, Mr. Dandeson Coates, became a militant force whom they found it difficult to shake off, and together with the enormous influence he was able to wield in religious circles, constituted a power that might have made the Government pause had they been predisposed to afford the Association the shelter of their wing.

Harassed by the Church Missionary Society and repulsed by Parliament the Association turned to the hope of resuming the negotiations with the Government at the point at which they had broken with Lord Glenelg. In the previous year the Colonial Secretary had, it will be remembered, reluctantly professed sympathy with the objects of the organisation up to the point that it fell short of being a Joint-Stock Company. He had then informed Lord Durham [1] that colonisation having gone on in New Zealand to some extent, the only question was between allowing it to proceed along desultory lines, without law, and fatal to the natives, or a colonisation organised and salutory. "Her Majesty's Government are therefore," he said, "disposed to entertain the proposal of establishing such a colony. They are willing to consent to a Corporation by a Royal Charter, of various persons to whom the settlement and government of the projected colony for some short term of years would be confided. The Charter would be framed with reference to the precedents of the colonies established in North America by Great Britain in the sixteenth and seventeenth centuries."

The basis on which these Atlantic colonies had been established was that of business concerns; for it was officially stated that the Association's scheme was objected to because of the absence of an actual subscribed capital, and the consequent want of protection to those proceeding

[1] *Vide* his letter to Lord Durham, December 29, 1837.

to the colony as emigrants. For the reasons already given, the stipulation that the Association should convert itself into a Joint-Stock Company was so contrary to the motives which had inspired it that it was at first, and still was, hotly resented and resisted by its principal and truly philanthropic promoters. Many of these now withdrew from the ranks of the Association; but others, rather than give up the hope of colonising the Islands, consented to comply with the demand of the Minister, after Parliament had rejected their Bill, as they wrongly assumed, for the insufficient reason of a non-existent capital. The Association then, in 1838, became a Company, shares were issued, capital subscribed, the reorganisation changing its whole character from a quasi-benevolent to a strictly commercial concern, whose business it was to buy land at a low price in New Zealand, and sell it at a high price in England.[1]

In the meantime a change had taken place at the Colonial Office. Lord Glenelg had fallen over his Canadian policy, and in the year following its reconstruction, the Company, on the ground that they had now complied with all that had been stipulated for, approached his successor, Lord Normanby, "with a view of obtaining, through his Lordship's intervention, a Royal Charter of Incorporation." Upon what took place at this interview the widest divergence of opinion appears to exist. The Company claimed that the Minister received them with the greatest affability and encouragement, and that in consequence they left the Colonial Office in high spirits at the very favourable reception they had met with, and were perfectly satisfied in their own minds that all opposi-

[1] "I was the principal founder of the Company and the principal Managing Director from the time of its formation till the summer of 1846, allowing for intervals of absence occasioned by illness and other occupation at a distance from England. My incapacity changed the whole character of the direction of the New Zealand Company's affairs, which then fell into the hands of a few persons in whose minds sound principles of colonisation and colonial government were as nothing compared with pounds, shillings, and pence."—Evidence of E. G. Wakefield before a New Zealand Parliamentary Committee on New Zealand Company's debt—Sessions 1 and 2.

tion to their scheme had not only ceased, but that they could proceed with the full concurrence of the Government.

Their feelings may, therefore, be easily imagined when, within forty-eight hours of their meeting with the Minister, they received an official letter from Lord Normanby, dated March 11, 1839, in which his Lordship warmly repudiated the suggestion that the Government was in any way bound to give effect to his predecessor's promise. He pointed out that Lord Glenelg's offer had been distinctly rejected by those to whom it was made; that they had since applied to Parliament for powers which they had failed to procure from the Crown; and that the personnel of the Company had so completely changed that by no process of reasoning could it be argued that the promise of Ministerial approval had been given to the same people as were now making the application. He therefore claimed that he stood unfettered by any pledge, and was free to discuss the question in the public interests, and for the public as though the rejected offer of 1837 had not been made.

In thus sternly refusing to countenance the proceedings of the Company, the Minister may have been induced to adopt the course he took by a reason altogether different from that which he gave, but one which he found more difficult to diplomatically express. For directing his attention to the change in the personnel of the promoters he was indebted to his Departmental Secretary, Mr. Stephen, who had kept the strictest watch upon the correspondence of the Company, and when the request, now under review, was preferred, he wrote a Memorandum to his Minister which may have profoundly influenced the mind of Lord Normanby.

"You can see," he said, "from looking over the list of the proposed Directors, that the leading members are now Roman Catholics. If this business is committed to them, New Zealand will infallibly become a Roman Catholic country. I am convinced that this would give the most severe offence to all the religious bodies which have established Missions there. I cannot withhold expressing my own opinion that the objection would be perfectly just and well founded. As long as we have the choice

of establishing Popery or Protestantism in any part of the world I cannot understand how any one, not a Roman Catholic, would hesitate what that choice should be." [1]

How far the suggestion of Mr. Stephen weighed, or did not weigh, with his chief can now only be a matter of merest speculation, for unfortunately little in the way of record has been left to guide us. It is possible that under the sway of the religious feeling which existed in England at that time he did not altogether disregard it, but it is more probable that the circumstance which weighed with him most was the fact that since Lord Glenelg's day the Government had received more serviceable advice as to their powers under the Law of Nations, and that finding it was not within their right to issue a Charter affecting New Zealand, they were then considering the suggestions made by Mr. Busby and Captain Hobson, and were even at that moment contemplating the steps which they afterwards took. Lord Normanby would, under these circumstances, find it difficult and inexpedient to refer in definite language to these immature plans, and consequently the general terms in which he was compelled to speak may have misled the members of the Company who waited on him to sue for a Charter. In considering a petition from the Merchants, Bankers, and Shipowners of the City of London respecting the colonisation of New Zealand, an effort was made by a Committee of the House of Commons, in 1840, to discover exactly what was the attitude of the Ministerial mind at this juncture. Mr. Gibbon Wakefield complained that the Company had been scurvily treated by Lord Normanby, who had led them to suppose that they had his sympathy and approval, and had then, within a comparatively few hours, despatched the letter in which he refused to be bound by the promise of his predecessor to issue a Charter. In reply to this accusation, Mr. Labouchere, who was then Under-

[1] For the text of the above Memorandum I am indebted to Mr. R. M'Nab, who copied it from the original in the Record Office, London. Mr. Stephen, who wrote the Memorandum, was, at the time, an officer of the Church Missionary Society.

Secretary at the Colonial Office, and might, therefore, be expected to have some inside knowledge, took the view that the Minister had been misunderstood, and asked whether the position was not this: That Lord Normanby had stated to the Company that he considered their objects very useful and laudable, and that he should have been disposed to give them his most favourable consideration, provided New Zealand were a British colony; that he intended to take steps that he believed would probably lead to the constitution of New Zealand, either wholly or in part as a British colony; but that till those steps had been taken it would be utterly inconsistent with his official duty, not only to give encouragement, as a Minister, to the proceedings of the Company, but even to recognise them in any way whatever?

To this Mr. Wakefield's answer was: "My impression has always been that when Lord Normanby received those gentlemen he sincerely felt what he said; that he was glad to see persons of so much influence, and of such station in society, engaged in such a work; but that after the interview he came into communication with the officers of his Department, and received information of what had passed before, for he was quite new in the office,[1] and that the letter written after the interview, which was so much at variance with it, was written rather by the office, I should say, than by Lord Normanby himself, for the purpose of maintaining the consistency of the course which the Government had pursued."

It was therefore clearly the opinion of Mr. Wakefield that Mr. Stephen was a force to be reckoned with, and that whether he influenced it from the religious or the secular point of view, the Departmental head of the office was a powerful factor in moulding the policy which the Minister afterwards followed. But be that as it may, it still remains that from this date the Company and its colonising scheme received no quarter from the Colonial Secretary nor from the Department while he was at its head. Nothing daunted by official discourage-

[1] Lord Normanby became Colonial Secretary on February 8, 1839.

ment, the Company went steadily on with their arrangements; and within the year they had so far completed their plans that their pilot ship was ready to sail, all that was requisite being the extension of a helping hand to Colonel Wakefield, their pioneer representative, by Her Majesty's officers in Australia, in the event of things going badly with him. To this end, on April 29, Mr. William Hutt, who had now become chairman of the Company, Lord Petre and Mr. Somes waited upon Lord Normanby, preferring a request that letters might be given to the leader of their expedition, soliciting the good offices of the Governors of New South Wales and Van Dieman's land, should Colonel Wakefield require their aid. Their request was accompanied by a copy of the Company's instructions to Wakefield, all of which came as a violent surprise to the Colonial Secretary, who immediately pronounced with unmistakable emphasis, the Government's hostility to these unauthorised proceedings. He protested that this was the first he had heard of the Company's matured plans to proceed to New Zealand and there set up a system of Government independent of the authority of the British Crown, therefore it was impossible that he could do any act which might be construed into a direct, or even indirect, sanction of such a proceeding. He further made it plain that the Government could not recognise the authority of any agents whom the Company might send out to New Zealand, nor would they give future recognition to any proprietary titles to land within that country, which the Company might obtain by grant or purchase from the natives. Indeed, so far had matters, he said, now been pushed, that he had no option but to indicate that the time had arrived when Her Majesty must be advised by her Ministers to adopt one of the last of Lord Glenelg's recommendations, before he left the Colonial Office,[1] and take measures without delay to obtain cession in sovereignty to the British Crown of such parts of New Zealand as are, or might be, occupied by British subjects, and that officers selected by the Queen,

[1] *Vide* his letter to Lord Palmerston, December 12, 1838.

and not by the Company, would be appointed to administer the executive Government within such territory. "Under these circumstances," the Colonial Secretary concluded, "I must decline to furnish the Company with the introductory letters for which they apply."

This intimation was given to the Company in the dying days of April 1839, and by the 13th of June Lords Normanby and Palmerston had, after consultation with the Law Officers of the Crown, agreed not only that the moment was ripe for official action, but that the proper course to take was to send to New Zealand an officer with Consular powers, whose first duty would be to secure the cession in sovereignty from the chiefs. The territory so ceded was then to be annexed to New South Wales, the Consul to be raised to the rank of Lieut.-Governor, acting under the Governor of the Mother colony, but invested with sufficient authority to preserve law and order in the country. His salary of £500 per annum was at first to be a charge upon the revenues of New South Wales, to be refunded so soon as the necessary arrangements could be made for the collection of taxation in New Zealand.

On July 19 these proposals were confirmed by the Lords of the Treasury, whereupon Lord Palmerston penned the letter to Captain Hobson of which the opening paragraph of the previous chapter is a brief extract.

In the meantime a clipper brig of 400 tons, named the *Tory* had been quietly fitted out by the Company for a dash to New Zealand. She was armed with eight big guns, and as a precaution against a hostile reception, small arms were provided for all the members of the crew, a specially selected body of men. Under the command of Captain Chaffers, who had been round the world with Fitzroy in the *Beagle*, she left Plymouth Sound on May 12 (1839) and proving a smart sailer, crossed the equator twenty-six days out, the high land of the South Island being sighted in the vicinity of Cape Farewell on August 16. This pioneer ship of the Company's fleet carried in her cabin their official representative in the person of Colonel William Wakefield, and in her hold a full complement

of pots, pipes, and Jews' harps, which that gentleman proposed to exchange as full value for the land he hoped to acquire by barter from the natives.

The sailing of the *Tory* was the New Zealand Company's challenge to the Government, and in any estimate of its subsequent policy this precipitate event must be accounted an important factor in endowing the Colonial Office with a vital force which had hitherto been sadly lacking.

CHAPTER III

FINDING A WAY

THE favour of Ministerial selection for the onerous task of bringing New Zealand within the realms of Britain fell upon Captain Hobson, because his record in the Navy had justified the opinion expressed of him by Sir Richard Bourke, that he was an experienced and judicious officer. Moreover, his visit to the country in the *Rattlesnake* had given him a local knowledge of which few men of eminence and character were at that time possessed. There is no reason to suppose that the appointment was in any way a party one, and except that the new Consul was the victim of indifferent health, it was probably the best that could have been made at the time, its greatest justification being the complete success which attended his mission up to the time of his early decease.[1] Captain Hobson left England in the H.M.S. *Druid* commanded by Lord John Churchill. He went out fortified for his task by a series of instructions which left little doubt that if Ministers had

[1] Captain Hobson had acquired some distinction in the Navy by the capture of a band of pirates in the Mediterranean, the personal bravery displayed by him on that occasion being decidedly meritorious. He was afterwards engaged with the sloop-of-war *Rattlesnake*, and first attracted political notice by his report to the Government on the state of Society in New Zealand. Major Bunbury, who had considerable personal knowledge of him, describes him as an officer who wrote a good despatch, was fluent of speech, and was not without abilities, but had not the necessary grasp of thought to seize the main point of a question—to separate the grain from the chaff. He was very jealous of his authority and obstinate, particularly as disease made encroachment on his frame and intellect. He was of social habits and had the faculty of making private friends and also of creating public enemies. Mrs. Hobson is described as " an interesting person."

been slow to move, they had at least endeavoured to take a statesman-like view of the position when circumstances compelled them to act, the breadth of which can be best understood from the instructions themselves. After adverting to the social conditions existing in New Zealand, with which Captain Hobson was perfectly cognisant and which Lord Normanby assured him the Government had watched with attention and solicitude, the Colonial Secretary proceeded to explain the attitude which the Government had adopted in regard to this branch of Imperial policy.

We have not been insensible to the importance of New Zealand to the interests of Great Britain in Australia, nor unaware of the great natural resources by which that country is distinguished, or that its geographical position must in seasons, either of peace or war, enable it in the hands of civilised men to exercise a paramount influence in that quarter of the globe. There is probably no part of the earth in which colonisation could be effected with a greater or surer prospect of national advantage.

On the other hand, the Ministers of the Crown have been restrained by still higher motives from engaging in such an enterprise. They have deferred to the advice of the Committee of the House of Commons in the year 1836 to enquire into the state of the Aborigines residing in the vicinity of our colonial settlements, and have concurred with that Committee in thinking that the increase in national wealth and power, promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people whose title to the soil and to the sovereignty of New Zealand is undisputable and has been solemnly recognised by the British Government. We retain these opinions in unimpaired force, and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance.

The necessity for the interposition of the Government has, however, become too evident to admit of any further inaction. The reports which have reached this office within the last few months establish the facts that about the commencement of 1838 a body of not less than two thousand British subjects had become permanent inhabitants of New Zealand, that amongst them were many persons of bad and doubtful character,—convicts who had fled from our penal settlements, or seamen who had deserted their ships,—and that these people, unrestrained by any

law and amenable to no tribunals, were alternately the authors and victims of every species of crime and outrage. It further appears that extensive cessions of land have been obtained from the natives, and that several hundred persons have recently sailed from this country to occupy and cultivate these lands. The spirit of adventure having been effectually roused it can be no longer doubted that an extensive settlement of British subjects will be rapidly established in New Zealand, and that unless protected and restrained by necessary loans and institutions they will repeat unchecked in that quarter of the Globe the same process of war and spoliation under which uncivilised tribes have almost invariably disappeared, or often as they have been brought into the immediate vicinity of emigrants from the nations of Christendom. To mitigate, and if possible to avert these disasters, and to rescue the emigrants themselves from the evils of a lawless state of society, it has been resolved to adopt the most effective measures for establishing amongst them a settled form of Government. To accomplish this design is the principal object of your mission.

I have already stated that we acknowledge New Zealand as a sovereign and independent state so far at least as it is possible to make that acknowledgment in favour of a people composed of numerous dispersed and petty tribes, who possess few political relations to each other, and are incompetent to act or even deliberate in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen, in common with Her Majesty's predecessor, disclaims for herself and her subjects every pretension to seize on the Islands of New Zealand, or to govern them as a part of the Dominions of Great Britain unless the free intelligent consent of the natives, expressed according to their established usages, shall be first obtained. Believing, however, that their own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious, and little more than nominal, and persuaded that the benefits of British protection and of laws administered by British judges would far more than compensate for the sacrifice by the natives of a national independence which they are no longer able to maintain, Her Majesty's Government have resolved to authorise you to treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty's dominion. I am not unaware of the difficulties by which such a treaty may be encountered. The motives by which it is recommended are, of course, open to suspicion. The natives may probably regard with distrust a proposal which may carry on the face of it the appearance of humiliation on their side, and of a formidable encroachment on

ours: and their ignorance even of the technical terms in which that proposal must be conveyed, may enhance their aversion to an arrangement of which they may be unable to comprehend the exact meaning, or the probable results. These are, however, impediments to be gradually overcome by the exercise on your part of mildness, justice, and perfect sincerity in your intercourse with them. You will, I trust, find powerful auxiliaries amongst the Missionaries who have won and deserved their confidence; and amongst the older British residents who have studied their character and acquired their language. It is almost superfluous to say that, in selecting you for the discharge of this duty, I have been guided by a firm reliance on your uprightness and plain dealing. You will therefore frankly and unreservedly explain to the natives or their chiefs the reasons which should urge them to acquiesce in the proposals you will make to them. Especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable to no laws or tribunals of their own and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the Sovereign of their country, or at least of those districts within, or adjacent to which Her Majesty's subjects may acquire lands or habitations. If it should be necessary to propitiate their consent by presents, or other pecuniary arrangements, you will be authorised to advance at once to a certain extent in meeting such demands, and beyond those limits you will refer them for the decision of Her Majesty's Government.

It is not, however, to the mere recognition of the sovereign authority of the Queen that your endeavours are to be confined, or your negotiations directed. It is further necessary that the chiefs should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain. Contemplating the future growth and extension of a British colony in New Zealand, it is an object of the first importance that the alienation of the unsettled lands within its limits should be conducted from its commencement upon that system of sale of which experience has proved the wisdom, and the disregard of which has been so fatal to the prosperity of other British Settlements. With a view to those interests it is obviously the same thing whether large tracts of land be acquired by the mere gift of the Government or by purchases effected on nominal considerations from the aborigines. On either supposition the land revenue must be wasted, the introduction of emigrants delayed or prevented, and the country parcelled out amongst large land-owners whose possession must long remain an unprofitable, or rather a pernicious waste. Indeed, in a comparison of the two methods of acquiring land gratuitously, that of grants

from the Crown, mischievous as it is, would be the less inconvenient, as such grants must be made with at least some kind of system, with some degree of responsibility, subject to some conditions, and recorded for general information. But in the case of purchases from the natives even these securities against abuse must be omitted, and none could be substituted for them. You will, therefore, immediately on your arrival announce, by a proclamation [1] addressed to all the Queen's subjects in New Zealand that Her Majesty will not acknowledge as valid any title to land which either has been, or shall hereafter be acquired in that country which is either not derived from or confirmed by a grant to be made in Her Majesty's name and on her behalf. You will, however, at the same time take care to dispel any apprehensions which may be created in the minds of the settlers that it is intended to dispossess the owners of any property which has been acquired on equitable conditions, and which is not upon a scale which must be prejudicial to the latent interests of the community. Extensive acquisitions of such lands have undoubtedly been already obtained, and it is probable before your arrival a great addition will have been made to them. The embarrassments occasioned by such claims will demand your earliest and most careful attention.

I shall in the sequel explain the relation in which the proposed colony will stand to the Government of New South Wales. From that relation I propose to derive the resources necessary for encountering the difficulty I have mentioned. The Governor of that country will, with the advice of the Legislative Council, be instructed to appoint a Legislative Commission to investigate and ascertain what are the lands held by British subjects under grants from the natives; how far such grants were lawfully acquired and ought to be respected; and what may have been the price or other valuable consideration given for them. The Commissioners will make their report to the Governor, and it will then be decided by him how far the claimants, or any of them, may be entitled to confirmatory grants from the Crown, and on what conditions such confirmations ought to be made.

The propriety of immediately subjecting to a small annual tax all uncleared lands within the British settlements in New Zealand will also engage the attention of the Governor and Council of New South Wales. The forfeiture of all lands in respect of which the tax shall remain for a certain period in arrear would probably before long restore to the demesne of the Crown so much of the waste land as may be held unprofitably to themselves, and the public, by the actual claimants. Having by these measures

[1] This Proclamation was not enclosed amongst the official correspondence delivered to Captain Hobson upon his leaving England, and the deficiency was supplied by one drafted by Sir George Gipps and his Executive.

UNIV. OF
CALIFORNIA

CAPTAIN HOBSON, R.N.

UNIV. OF
CALIFORNIA

obviated the dangers of the acquisition of large tracts of country by mere land-jobbers, it will be your duty to obtain by fair and equal contracts with the natives the cession to the Crown of such waste lands as may be progressively required for the occupation of settlers resorting to New Zealand. All such contracts should be made by yourself, through the intervention of an officer expressly appointed to watch over the interests of the aborigines as their protector. The resales of the first purchases that may be made will provide the funds necessary for future acquisitions; and beyond the original investment of a comparatively small sum of money no other resource would be necessary for this purpose. I thus assume that the price to be paid to the natives by the local Government will bear an exceedingly small proportion to the price for which the same lands will be resold by the Government to the settlers, nor is there any real injustice in this inequality. To the natives or their chiefs much of the land in the country is of no actual use, and in their hands it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased by the introduction of capital and of settlers from this country. In the benefits from that increase the natives themselves will gradually participate.

All dealings with the natives for their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential or highly conducive to their own comfort, safety, or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their Official Protector.

There are yet other duties owing to the aborigines of New Zealand which may be all comprised in the comprehensive expression of promoting their civilisation, understanding by that term whatever relates to the religious, intellectual, and social advancement of mankind. For their religious instruction liberal provision has already been made by the zeal of the Missionaries, and of the Missionary Societies in this Kingdom, and it will be at once the most important and the most grateful of your duties to this ignorant race of men to afford the utmost encouragement, support, and protection to their Christian teachers. I acknowledge also the obligation of rendering to the Missions such pecuniary aid as

the local Government may be able to afford, and as their increased labours may reasonably entitle them to expect. The establishment of schools for the education of the aborigines in the elements of literature will be another object of your solicitude, and until they can be brought within the pale of civilised life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice and cannibalism must be promptly and decisively interdicted; such atrocities, under whatever plea of religion they may take place, are not to be tolerated in any part of the dominions of the British Crown.

It remains to be considered in what manner provision is to be made for carrying these instructions into effect as for the establishment and exercise of your authority over Her Majesty's subjects who may settle in New Zealand, or who are already there. Numerous projects for the establishment of a constitution for the proposed colony have at different times been suggested to myself and to my immediate predecessor in office, and during the last session of Parliament, a Bill for the same purpose was introduced into the House of Commons at the instance of some persons immediately connected with the emigrations then contemplated. The same object was carefully examined by a Committee of the House of Lords. But the common result of all enquiries, both in this office and in either House of Parliament, was to show the impracticability of the schemes proposed for adoption, and the extreme difficulty of establishing at New Zealand any institutions, legislative, judicial, or fiscal without some more effective control than could be found amongst the settlers themselves in the infancy of their settlement. It has therefore been resolved to place whatever territories may be acquired in the sovereignty by the Queen in New Zealand in the relation of a dependency to the Government of New South Wales. I am of course fully aware of the objections which may be reasonably urged against this measure; but after the most ample investigation I am convinced that for the present there is no other practicable course which would not be opposed by difficulties still more considerable, although I trust that the time is not distant when it may be proper to establish in New Zealand itself a local legislative authority.

In New South Wales there is a Colonial Government possessing comparatively long experience, sustained by a large revenue, and constituted in such a manner as is best adapted to enable the legislative and executive authorities to act with promptitude and decision. It presents the opportunity of bringing the internal economy of the proposed new colony under the constant revision of a power sufficiently near to obtain early and accurate intelligence, and sufficiently remote to be removed from the influence of

the passions and prejudices by which the first colonists must in the commencement of their enterprise be agitated. It is impossible to confide to an indiscriminate body of persons who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of government to which the British settlers in New Zealand are to be subject, it is essential to their own welfare, not less than that of the aborigines, that they should at first be placed under a rule which is at once effective and to a considerable degree external. The proposed connection with New South Wales will not, however, involve the extension to New Zealand of the character of a penal settlement. Every motive concurs in forbidding this, and it is to be understood as a fundamental principle of the new colony that no convict is ever to be sent thither to undergo his punishment.

The accompanying correspondence with the Law Officers will explain to you the grounds of law on which it is to be concluded that by the annexation of New Zealand to New South Wales the powers vested by Parliament in the Governor and Legislative Council of the older settlement might be exercised over the inhabitants of the new colony. The accompanying Commission under the Great Seal will give effect to this arrangement, and the warrant which I enclose under Her Majesty's sign manual will constitute you Lieut.-Governor of that part of the New South Wales colony which has thus been extended over the New Zealand Islands. These instructions you will deliver to Sir George Gipps, who on your proceeding to New Zealand will place them in your hands to be published there. You will then return it to him to be deposited amongst the archives of the New South Wales Government.

In the event of your death or absence the officer administering the Government of New South Wales will, provisionally, and until Her Majesty's pleasure can be known, appoint a Lieut.-Governor in your place, by an instrument under the public seal of his Government.

It is not for the present proposed to appoint any subordinate officers for your assistance. That such appointments will be indispensable is not, indeed, to be doubted. But I am unwilling at first to advance beyond the strict limits of the necessity which alone induces the Ministers of the Crown to interfere at all on this subject. You will confer with Sir George Gipps as to the number and nature of the official appointments which would be made at the commencement of the undertaking and as to the proper rate of their emoluments. These must be fixed with the most anxious regard for frugality in the expenditure of public resources. The

selection of the individuals by whom such offices are to be borne must be made by yourself from the colonists either of New South Wales or New Zealand, but upon the full and distinct understanding that their tenure of office, and even the existence of the offices which they are to hold must be provisional and dependent upon the future pleasure of the Crown. Amongst the offices thus to be created, the most evidently indispensbale are those of a Judge, a Public Prosecutor, a Protector of the Aborigines, a Colonial Secretary, a Surveyor-General of Lands, and a Superintendent of Police. Of these, the Judge alone will require the enactment of a law to create and define his functions. The Act now pending in Parliament, for the revival, with amendments, of the New South Wales Act will, if passed into law, enable the Governor and Legislative Council to make all necessary provision for the establishment in New Zealand of a Court of Justice and a judicial system separate from and independent of the existing Supreme Court. The other functionaries I have mentioned can be appointed by the Governor in the unaided exercise of the delegated prerogative of the Crown. Whatever laws may be required for the Government of the new colony will be enacted by the Governor and Legislative Council. It will be his duty to bring under their notice such recommendations as you may see cause to convey to him on subjects of this nature. The absolute necessity of the revenue being raised to defray the expenses of the Government of the proposed settlement in New Zealand has not, of course, escaped my careful attention. Having consulted the Lo ds of the Treasury on this subject I have arranged with their Lordships that until the sources of such revenue shall have been set in action, you should be authorised to draw on the Government of New South Wales for your unavoidable expenditure. Separate accounts, however, will be kept of the public revenue of New Zealand and of the application of it and whatever debt may be contracted to New South Wales, must be replaced by the earliest possible opportunity. Duties of impost on tobacco, spirits, wine, and sugar will probably supersede the necessity of any other taxation, and such duties except on spirits will probably be of a very moderate amount.

The system at present established in New South Wales regarding land will be applied to all the waste lands which may be kept by the Crown in New Zealand.

Separate accounts must be kept of the Land revenue, subject to the necessary reductions for the expense of surveys and management, and for the improvement by roads and otherwise the unsold territory, and subject to any deductions which may be required to meet the indispensable exigencies of the local Government. The surplus of this revenue will be applicable, as in New South Wales, to the charge of removing emigrants from this kingdom to the new colony.

The system established in New South Wales to provide for the religious instruction of the inhabitants has so fully justified the policy by which it was dictated that I could suggest no better means of providing for this all-important object in New Zealand. It is, however, gratifying to know that the spiritual wants of the settlers will, in the commencement of the undertaking, be readily and amply provided for by the Missionaries of the Established Church of England and of other Christian communions, who have been so long settled in those Islands. It will not be difficult to secure for the European inhabitants some portion of that time and attention which the Missionaries have hitherto devoted exclusively to the aborigines.

I enclose, for your information and guidance, copies of a correspondence between this department and the Treasury, referring you to Sir George Gipps for additional instructions as may enable you to give full effect to the view of Her Majesty's Government on the subject of finance. You will observe that the general principle is that of maintaining in the proposed colony a system of revenue, expenditure, and account entirely separate from that of New South Wales, though corresponding with it as far as that correspondence can be maintained.

After briefly describing the rules to be observed by Captain Hobson in conducting his correspondence with his immediate superior, Governor Gipps, and the Colonial Office, Lord Normanby concluded his instructions as follows:

I have thus attempted to touch on all the topics on which it seems to me necessary to address you on your departure from this country. Many questions have been unavoidably passed over in silence, and others have been adverted to in a brief and cursory manner, because I am fully impressed with the conviction that in such an undertaking as that in which you are about to engage much must be left to your own discretion, and many questions must occur which no foresight could anticipate or properly resolve beforehand. Reposing the utmost confidence in your judgment, experience, and zeal for Her Majesty's service, and aware how powerful a coadjutor and how able a guide you will have in Sir George Gipps, I willingly leave for consultation between you many subjects on which I feel my own incompetency, at this distance from the scene of action, to form an opinion.[1]

The publication of this document brought down upon the head of the Minister a storm of criticism from the

[1] *Vide* his instructions to Captain Hobson, August 14, 1839.

committee of the New Zealand Company, who attacked with especial bitterness that portion of the instructions wherein Lord Normanby made it especially clear that Britain claimed no right of sovereignty in or over New Zealand. In the previous year, when the Company was promoting its Bill in the House of Commons, and when the organisation was less mercenary in its nature, the promoters had taken a modified view of this question of sovereignty, and were prepared to concede something to the natives which, as a Company, they were now eager to deny.

This earlier attitude was admirably expressed by the Rev. Dr. Hinds, who in discussing the matter before the Committee of the House of Lords, boldly stated that he believed civilised people had a right—an inherent right—over countries that have not been subject to civilisation, whether those countries were uninhabited or partially inhabited by savages who were never likely themselves to cultivate the country. "Here," he said, "is a country considered to be populous for a savage country. According to an estimate made by a respectable Missionary of the C.M.S. the inhabitants of the Northern Island amount to about 105,000. This Northern Island is probably about the size of England, and this its population of 105,000 stated to be decreasing in number without the least chance of their becoming cultivators or sovereigns of the soil. I hold it not to be an infringement of any natural rights to claim the sovereignty of the Island, and this is a claim which until lately would never have been questioned. There has been often a question as to the mode in which sovereign rights over savage countries should be distributed among civilised people, but it has been a question between one civilised country and another. Formerly the Pope used to claim the disposal of sovereignty. Subsequently it has been more conveniently settled by allowing the priority of claim to the first discoverers—a course as convenient probably as can be advised. Within the last few years, however, the justice of this claim has been questioned, and it has been asserted that savage as

THE MISSION CHURCH AT KORORAREKA.

Where Captain Hobson read his Proclamations.

UNIV. OF
CALIFORNIA

well as civilised men have sovereign rights. I do not, myself, think they have; but it has been the wish of the Association not to offend any scruples, and therefore they have carefully in this Bill waived the question, and allowed the claim to a sovereign right of some kind to exist in those savages. I say a sovereign right of some kind, because it is clear in the instance just mentioned, the giving the flag to the Bay of Islands, that the very assumption on the part of Great Britain of a right to give that flag supposes the New Zealanders not to be altogether a sovereign power. Many probably who may be willing to cede to them the right of sovereignty as far as concerns themselves would not go to such lengths as to say that Great Britain should not cede the sovereignty as regards any right which may be put in by other nations; and I do not know on what principle we should draw a distinction, and say how much or how little of this right of sovereignty we should claim. The French have been attracted by the flax: suppose they were to say 'If you relinquish your rights of sovereignty we will put in our claim, we stand next,' or the Dutch may say so. I do not know which visited the country first, but I cannot see on what principle we could interfere with the French or Dutch unless we contend that we had some disposal over the sovereignty of the Islands. The question, however, has been waived in the Bill; we suppose the New Zealanders and not Great Britain to be in possession of the right of sovereignty, and we propose accordingly that a purchase should be made of the sovereignty as well as the fee simple of the land. We have some precedents for this. I do not know whether it is of consequence to bring forward precedents, but even at a late period a purchase of this kind has been made; Sir Stafford Canning took possession in 1815 of Singapore; it was at that time in possession of the Malays, the subjects of the Sultan of Jahore. In 1825 he found, I think, some inconvenience arising from the Sultan's claims, and the English bought the Domain of the Sultan for a sum of money, and so clear was the understanding about it, that the Sultan made some reservations; some exceptional

laws, as they are called in this Bill, were made. There was a clause that the Sultan's slaves should not be emancipated, and certain lands were reserved and became entailed property and inalienable. When Penn purchased Pennyslvania he no doubt understood he purchased the sovereignty as well as the fee simple of the land, for I can conceive no one mad enough to found a colony in the midst of barbarians without securing the colonists against their interference as sovereigns. Vattel certainly speaks of Penn's treaty as if he understood him to have purchased the sovereign rights as well as the fee simple. These are precedents which may not be considered as carrying any great authority. The question has not been very much discussed; it has been taken for granted, and I think with reason, that the savage is in a state of pupilage, and must be treated as we treat children. The only principle which it is important to maintain is this: If you go into a country at all inhabited by savages and take possession of their land and become sovereigns of it, you infringe their rights if you do not consider their benefit as well as your own. If you were treating with a child you would not infringe the rights of that child simply by acting and deciding for him, but you would infringe his rights if you acted and decided for your benefit and not his. So with respect to savages; they are compared with civilised men, like children. They are of themselves incapable of acquiring the arts and habits of civilised life; unless some interference that amongst civilised men would be considered unjust, takes place, they never can, by themselves, rise to that higher condition. The injustice to be deprecated is that of seeking our own benefit solely and not theirs; and with respect to the New Zealanders our purchase of the sovereignty of their country ought not to be represented as being the same kind of bargain as if the French, for instance, were bargained with to cede the sovereignty over any portion of their territory. When the French ceded their sovereign rights over Martinique, Guadaloupe, and the Mauritius, they strictly ceded all their sovereign rights; but in the present instance what is meant by the

cession of sovereignty amounts to this—that we purchase the right to participate in the sovereignty with them; we do not wish to exclude them, but pay them a price to partake in the sovereignty with them. Of course, in the first instance, the civilised man will be the only sovereign, but that is because he only will be fit and capable of exercising sovereign rights. As the savage advances in civilisation he will come in for his share; and I see no reason, as soon as the New Zealander is capable of it, against his being Chief Justice, Governor, or Bishop, or holding any other office. It is not therefore that we take the sovereignty from him; we purchase the right of participating with him in the sovereignty, and by so doing we enable him to become Sovereign of the country, which he is not at present."

In the meantime the Government had unmistakably demonstrated their intention not to recognise the Company, and with all hope of political patronage gone the Company saw no reason why they should spare the Government. There was now in their opinion no possible room to doubt that the sovereignty over New Zealand rested in Great Britain, and that the Colonial Department was betraying a national trust in conceding any rights to the natives, thereby opening the door to foreign intervention. They first showered their protests against this supposed surrender of a national asset upon the Colonial Office, but when they discovered themselves ignored in this direction they turned with renewed complaint to the Foreign Minister. "We are assured," they wrote to him, on November 7, 1839, "that this question of the sovereignty of New Zealand engages the attention of various commercial bodies and a large portion of the public press in France; that the sovereignty in England is denied; that the French Government is urged either to join in that denial, by protesting against the colonisation of the Islands by England, or to claim an equal right with England to plant settlements there. We are not without fear that some such protest or claim should be admitted by your Lordship's Department, as it appears to have been admitted by the Colonial Department. It appears that the agitation of

this question in France has been produced by the publication of a Minute of the British Treasury made at the instance of the Colonial Department (July 19), and also of an extract of certain instructions recently given by that Department to Captain Hobson,—two documents by which the Crown of England seems to repudiate the sovereignty of New Zealand. The apparent repudiation consists of an acknowledgment of sovereignty in the native chiefs from whom Captain Hobson is instructed to procure, if possible, a cession to Her Majesty, It is this acknowledgment, according to all our information, which has given occasion to the pretensions now urged in France.[1] That which England, it is contended, instructs her officer to procure, if possible, she admits she does not possess, and she thereby admits the right of France either to obtain sovereign jurisdiction in New Zealand, by the means which Captain Hobson is instructed to employ, or if France should prefer that course, to sustain the independent sovereignty of the natives. The argument appears conclusive. It becomes very important, therefore, if it is of great importance to England, to prevent the establishment of a French power in the midst of the English colonies of Australasia that your Lordship should be made aware of the acts of the British Crown which lead to a conclusion directly at variance from that which may be drawn from the said minute and instructions."

The Company's nominal[2] advocate on this occasion was their Deputy-Governor, Mr. Somes, who apparently possessed a faculty for stating strongly a weak case; and in the course of this letter to Lord Palmerston he taxed his ability to show that the right of sovereignty in New Zealand had vested in Britain since the discovery of the Islands by Captain Cook; that it had been confirmed by numerous diplomatic acts in all the years since then, and could not now be abandoned on the mere whim of a Minister.

[1] The *Journal de Havre* was particularly active in discussing New Zealand at this time.

[2] It is suggested that the real advocate was Edward Gibbon Wakefield.

During the course of his trenchant review of the position Mr. Somes declared that the sovereignty of England in New Zealand had been over and over again asserted and exercised. Whether it could be subsequently abandoned by such documents as the Treasury Minute and instructions was a question in constitutional and international law on which his Lordship was of course far more competent to judge than they could pretend to be. But that there was recently a British sovereignty either to maintain or to abandon the Company had no sort of doubt. He pointed out that in the year 1769, Captain Cook, acting under a commission from the Crown of England, took possession of the Islands of New Zealand, in the name of His Majesty, George III. This act was performed in the most formal manner, and was published to the world. "We are not aware," he wrote, "that it was ever questioned by any foreign power. It constituted sovereignty by possession. The Law of Nations, we believe, recognises no other mode of assuming dominion in a country, of which the inhabitants are so barbarous as to be ignorant of the meaning of the word sovereignty, and therefore incapable of ceding sovereign rights. This was the case with the New Zealanders, from whom it would have been impossible for Captain Cook to have obtained, except in mockery of truth, a British sovereignty by cession. Sovereignty by possession is that which the British Crown maintains in a large portion of its foreign dependencies. In this year, 1787, a Royal Commission was granted to Captain Philip appointing him in pursuance of the British sovereignty in possession, which had previously been established by Captain Cook, "Captain-General and Governor-in-Chief in and over the territory of New South Wales and its dependencies." This territory was described in the commission as "Extending from Cape York, latitude 11° 37′ south, to the South Cape, latitude 43° 30′ south, and inland to the westward as far as 135° east longitude, comprehending all the Islands adjacent in the Pacific Ocean, within the latitudes of the above-named capes." This is the Act by which the

Crown first assumed the Government of New South Wales and the other barbarous lands of which Captain Cook had taken possession in the name of the King. The Islands of New Zealand are as clearly within the prescribed limits as Norfolk Island, Van Dieman's Land, or even New South Wales itself. On November 9, 1814, the Governor and Captain-General of New South Wales and its dependencies, acting on the representation of the Crown, by public proclamation, declared New Zealand to be a Dependency of his Government, and by regular commission of *dedimus potestatem* appointed Justices of the Peace to act there. Some of the Magistrates so appointed were aboriginal natives of the country. It is plain that they were treated as British subjects. In 1819 again Governor Macquarrie appointed an English Magistrate in New Zealand. This Justice of the Peace exercised the authority so bestowed on him by apprehending offenders and sending them for trial to the seat of Government. In 1823 a British Act of Parliament (4 George IV. cap. 96) extended the jurisdiction of the Courts of New South Wales to New Zealand by name, and also to other places in the Southern Pacific not within the latitudes previously mentioned. Under this authority several persons, we understand, have been tried in New South Wales for offences committed in New Zealand, and we have been informed that property in New Zealand, as well real as personal, has been made the subject of the Bankruptcy law of New South Wales. The authority of the British Crown was frequently enforced by means of ships of war, and although it cannot be asserted that regular government was ever established in New Zealand, far more than was essential to creating British dependency seems to have been performed. The Islands thus continued in a state of dependency until the year 1831, when a series of proceedings commenced by which the sovereignty of Britain may perhaps have been forfeited. An officer was appointed to reside at the Bay of Islands. He presented to certain native chiefs, as from the Crown of England, what was termed " a national flag." This might have been considered a transfer to

these chiefs of the British sovereignty, if the Resident had not been 'accredited' to certain officers of the Church Missionary Society, then settled at the Bay of Islands. By the latter act the sovereignty of the Islands would almost seem to have been transferred to these Missionaries. But in October 1835 this diplomatic agent assembled certain native chiefs residing in the Northern part of the North Island, called them a "Confederation," and sanctioned a declaration of Native Independence, to which their names were appended. This last act appears, by all accounts, to have been a mere mockery of its ostensible purport. The tribes of New Zealand are so entirely distinct, so utterly destitute of nationality, as to have no name for the whole country which they inhabit. A national name was invented for this occasion—the words *Na Terrene* which express the native pronunciation of the English words "New Zealand." The only parties besides to the so-called Declaration of Independence were the chiefs of a few tribes then inhabiting a small part of one of the Islands. These even, inasmuch as their language contains no words to express nationality, sovereignty, or independence, must have been unconscious instruments of the Resident, or of the Missionaries, to whom that officer was accredited, as if they (the Missionaries) had been the sovereigns of New Zealand. If indeed the sovereignty was delegated to the Missionaries they could, being British subjects, have held it as trustees for the Crown. If the sovereignty of the natives was then acknowledged it extended only to a small part of one Island inhabited by the parties to the Declaration. And in either case this mockery of an independent sovereign nationality has been set at naught by the power in whose name it took place, inasmuch as the jurisdiction of British law, and the armed authority of British war-ships have been exercised since in the same way as before the Bay of Islands' Declaration of Independence.

"I beg leave," continued Mr. Somes, "to assure your Lordship in the name of my colleagues that we intrude on you with the greatest reluctance. But we have felt that

it was incumbent on us especially during the recess of Parliament to convey to your Lordship the information that we have received as to the state of feeling in France on this subject, so that if unhappily the British sovereignty of New Zealand were lost it should be through no fault of ours. We fear that the measures recently adopted by the Colonial Department may, unless promptly remedied, lead to very disastrous results. We are deeply concerned for the fate of a large and most respectable body of our countrymen, who have emigrated under our auspices. Connected as several of us are with the commercial and shipping interests of the country, and knowing therefore how much importance they attach to the British possession of New Zealand, as they have frequently stated in memorials to the Treasury and Board of Trade, we have felt that it was a duty to express to your Lordship the apprehensions which we entertain. We have been told that a French frigate recently sailed for the South Seas with sealed orders, and some of the French newspapers report, with expressions of satisfaction, that the Government of the United States of America has appointed a Consul in New Zealand, to be accredited to 'the Confederation of chiefs,' and has sent him to his destination in a man-of-war, which is to remain under his orders. These statements may be untrue, or only premature, but in either case Captain Hobson's instructions which attach two conditions, either or both of which may be unattainable, to the exercise of any authority by him in New Zealand, namely possession of the land by British subjects, and cession by the natives of the sovereignty over such land, are calculated to invite foreign pretensions which otherwise would never have been imagined."

This protest was taken most philosophically by Lord Palmerston, who merely passed it on to Lord John Russell, who had now succeeded Lord Normanby at the Colonial Office. Lord John treated it even more philosophically, for it was not for several months (March 11, 1840) that he deigned to reply, and then only after he had been reminded of the omission by the Foreign Office. In the

meantime all need of further argument had been obviated by the success of Captain Hobson's mission, and so the Colonial Secretary wasted no words in rhetoric, but forwarded to his colleague a memorandum couched in concise official terms, setting out in sequence the events which in the light of International law would be used as evidence against any claim to British sovereignty, and which contained all the information it appeared necessary to afford in answer to the communication from Mr. Somes.

It is easy to understand the indignation of the Company on learning of the Minister's repudiation of British sovereignty in New Zealand, because it sapped the very foundations of their scheme, seeing that it was illegal for British subjects to establish colonies outside the limits of the Empire without the sanction of the Crown. They had always presupposed the existence of a British sovereignty over New Zealand and upon that supposition all their calculations had been built. Now the basis of their building had gone, they adroitly pretended that what grieved them was not so much their loss as that the repudiation of British authority was a national calamity, and that what was the neglect of Britain became the opportunity of France.

The position taken up by the Government was, however, perfectly sound, and was the only logical one they could occupy. Whether previous Governments had acted wisely and well in declining to embrace the opportunity to colonise which Cook's discovery had opened to them, may be a debatable question, but the fact at this date was that the golden opportunity had passed, and that by subsequent diplomatic acts, deliberately taken, the independence of the Maori people had been clearly and emphatically acknowledged. "The answers," wrote Lord John Russell to Lord Palmerston, "which would be made by foreign nations to such a claim as that put forward by Mr. Somes are two. First that the British Statute Book has, in the present century, in three distinct enactments, declared that New Zealand is not a part of the British

Dominions, and secondly that King William IV. made the most public, solemn, and authentic declaration which it was possible to make that New Zealand was a substantive and independent state. The resolution by the King, Lords, and Commons of Great Britain of the fact that New Zealand is not a part of the British Dominions will be found in the Statutes 57 George III. cap. 53, 4 George IV. cap. 96 sec. 3, and 9 George IV. cap. 83, sec. 4.

The Act of 57 George III. cap. 53 is entitled "An Act for the more effectual punishment of murders and manslaughters committed in places not within His Majesty's dominions." It sets forth—"Whereas grievous murders and manslaughters have been committed at the settlement of the Bay of Honduras in South America, etc.," "and the like offences have also been committed in the South Pacific Ocean, as well on the high seas as on land, in the Islands of New Zealand and Otaheite, and in other Islands, countries, and places not within His Majesty's dominions, by the Masters and crews of British ships, and other persons who have for the most part deserted from or left their ships, and have continued to live and reside amongst the inhabitants of those Islands, etc.," and the Act then provides for the punishment of offences so committed "in the said Islands of New Zealand and Otaheite, or within any other Islands, countries, or places, not within His Majesty's dominions, nor subject to any other European State or power," etc.

The Statute 4 George IV. cap. 96, sec. 3 enacts that the Supreme Courts in the colonies of New South Wales and Van Dieman's Land may try offences "committed in the islands of New Zealand, Otaheite, or any other Island, country, or place, situate in the Indian or Pacific Oceans, and not subject to His Majesty or to any European State," if such offences were committed by British subjects.

The Statute 9 George IV. cap. 83, sec. 4 repeats that enactment in the same words, adding only that the punishment of the offence shall be the same as if the crime had been committed in England.

The recognition by King William IV. of New Zealand

as a substantive and independent state is shown in the following narrative:

"On November 16 a letter to King William IV. from thirteen of the chiefs of New Zealand was transmitted to Lord Goderich, praying the protection of the British Crown against the neighbouring tribes and against British subjects residing in the Islands. On June 14, 1832, Lord Ripon despatched Mr. Busby as British Resident, partly to protect British Commerce, and partly to repress the outrages of British subjects on the natives. His Lordship sent with Mr. Busby a letter to the chiefs, in which the King was made to address them as an independent people. Their support was requested for Mr. Busby, and they were reminded of the benefits which they would derive from 'the friendship and alliance with Great Britain.'

"In the month of June 1832 a Bill was brought into the House of Commons for the prevention of crimes committed by His Majesty's subjects 'in New Zealand, and in other Islands in the Pacific not being within His Majesty's dominions.' The Bill was rejected because Parliament could not lawfully legislate for a foreign country.

"On April 13, 1833, the Governor of New South Wales, in obedience to Lord Ripon's (formerly Lord Goderich) orders, addressed instructions to Mr. Busby, in which New Zealand was expressly mentioned as a foreign country, and Mr. Busby himself as being accredited to the chiefs. That document throughout assumes the independence of New Zealand.

"On April 29, 1834, General Bourke transmitted to Lord Stanley a proposal from Mr. Busby for establishing a national flag for the tribes of New Zealand, 'in their collective capacity,' and advised that ships built in the Island and registered by the chiefs should have their registers respected in their intercourse with British possessions. Sir R. Bourke reported that he had sent three patterns of flags, one of which had been selected by the chiefs; that the chiefs had accordingly assembled with the commanders of the British and three American ships, to

witness the inauguration of the flag, at which the officers of H.M.S. *Alligator* were also present. The flag had been declared to be 'the national flag' of New Zealand, and being hoisted, was saluted with twenty-one guns by the *Alligator*, a British ship-of-war.

"On November 21, 1834, a despatch was addressed to Sir Richard Bourke by Lord Aberdeen, approving of all these proceedings in the name of the King, and sending a copy of a letter from the Admiralty, stating that they had instructed their officers to give effect to the New Zealand Registers, and to acknowledge and respect the national flag of New Zealand.

"If these solemn Acts[1] of Parliament, and of the King of Great Britain, are not enough to show that the pretension made on behalf of Her Majesty by this Company is unfounded, it might still further be repelled by a minute narrative of all the relations between New Zealand and the adjacent British colonies. It is presumed, however, that after the preceding statement it would be superfluous to accumulate arguments of that nature and the rather because they could not be intelligibly stated without entering into long and tedious details."

While this discussion was proceeding in England, Captain Hobson was happily on his way to Sydney, with his instructions rendered still more explicit[2] by further explanation from Lord Normanby, thus eliminating, as far as human forethought could provide, the possibility of misunderstanding as to the extent of his authority, or to the sincerity of the broad humanitarian principles which were to govern his conduct towards the natives.

Reaching Sydney late in December 1839[3] he imme-

[1] These Acts were quoted as evidences of Britain's repudiation of sovereignty in New Zealand, by M. Guizot, the French Foreign Minister, during the debate on the sovereignty question in the Chamber of Deputies on May 29, 1844.

[2] After perusing the original draft of his instructions, Captain Hobson referred several matters therein back to the Minister for further explanation, and on August 15, 1839, Lord Normanby replied in a memorandum which amplified his intentions, but in no way changed their spirit.

[3] On arrival at Sydney Captain Hobson was waited on by a deputation of New Zealand landowners, who requested to know his views

diately reported himself to Sir George Gipps, who entered into the spirit of the enterprise with his characteristic enthusiasm for the service of the Empire. During their official negotiations the final arrangements were completed agreeably to the intentions of the Colonial Secretary, Captain Hobson was placed in the possession of the Proclamation under the Great Seal, by which the Government of New South Wales was extended to any territory which might be acquired as the result of Hobson's mission "in those Islands commonly called New Zealand." Simultaneously he was presented with his own Commission as Lieutenant-Governor of any such territory, and with the proclamations he was to issue in New Zealand, as circumstances rendered necessary or advisable. He was also placed in possession of further instructions from Sir George Gipps, who laid special stress upon the financial relations existing between the two colonies. "My responsibility for the due expenditure of the public money of this colony," he said, "is one of which I cannot divest myself, and where responsibility is there also must be control. The extent to which establishments are to be erected in New Zealand, the salaries to be paid to public officers, and the expenditure of public money on public works, must for the present be fixed by myself on estimates and reports or proposals to be forwarded by you." Close enquiry was also made into the legal question which Captain Hobson had raised with Lord Normanby when seeking fuller information regarding his powers of administration. Hobson desired the power to appoint and suspend Magistrates; to pardon offences and remit sentences, and to exercise original control, which the insular position of New Zealand seemed to demand, but which was seldom conferred upon those holding the subordinate office of Lieutenant-Governor. To this request Lord Normanby had replied that all the

---

regarding their lands. With his answers to their questions the deputation was in general satisfied, as he encouraged them to occupy their lands and proceed with their improvements. Subsequently an address of Welcome was presented to him at Government House, and he appeared highly flattered by the compliment paid him.

powers necessary for the proper conduct of his office would be conferred upon him by acts of the Governor and Legislature of New South Wales. Hobson was unconvinced, but deferentially refrained from pitting his lay opinion against that which he naturally assumed was based upon the wider knowledge possessed by the Department. Sir George Gipps had no such reservations, and at once declared his inability to delegate to another powers which had only been delegated to him.

In communicating his final instructions to the Lieutenant-Governor, Gipps wrote: "With respect to certain powers or prerogations of the Crown, with which Governors of colonies are usually entrusted, it is necessary for me to point out to you that though I am myself authorised by Her Majesty to exercise them in her name, and on her behalf, I have no power to delegate the exercise of them to another. From this, which is an inherent maxim in law, it will, I believe follow:

"(1) That you will not have power to pardon offences, or to remit sentences pronounced on offenders in due course of law, though you may stay the execution of the law.

"(2) That you will not be authorised to suspend officers holding appointments direct from Her Majesty, though you may recommend to me the suspension of them. With respect to persons holding appointments from me you will have the power of suspension, and over such as hold appointments from yourself a power of dismissal unless they may have been previously recommended by you for confirmation in the service, in which case your power will extend only to suspension.

"(3) You will not have power of appointing Magistrates, though of course you will recommend to me such persons as you may think fit to be appointed.

"(4) In the event of the enrolment of a militia, the same will hold good respecting the appointment of officers."

A staff of officials for the due conduct of the civil business of the country was also appointed,[1] even to a

[1] "Captain Hobson is accompanied by several officers, selected for their known incompetency by Sir George Gipps. What assistance

small force of policemen, and with an almost prophetic punctiliousness for detail, a Commission was prepared for his successor in the event of Hobson's death, so that there might be no break in the continuity of official control.

With these preliminaries settled, Governor Gipps, on January 14, issued three proclamations: (1) extending the boundaries of New South Wales to New Zealand; (2) proclaiming Captain Hobson Lieutenant-Governor of those Islands, and "calling upon all British subjects to the aiding and assisting of the said William Hobson in the exercise of his said duty"; (3) to put an end to the speculation in New Zealand lands then being openly carried on in Sydney.

The *Herald*, a frigate of twenty guns, commanded by Captain Nias, lay in Spring Cove, waiting to convey the Queen's representative and his party to New Zealand.[1] At six o'clock on the evening of Saturday the 18th the staff appointed to accompany the Consul joined the vessel, and at a somewhat later hour Captain Hobson himself went on board. Under the influence of a fine N.E. wind, a full moon shining down upon the harbour, the *Herald* left Port Jackson and headed for the Bay of Islands. Fine weather was experienced in the Tasman Sea and on Sunday the 26th, while a gentle breeze filled the sails and soft zephyrs whispered through the cordage, Captain Nias conducted Divine service on the gun deck, which was attended by the whole ship's company, and "a more beautiful and impressive scene I never witnessed," is the description of the ceremony given by Mr. Felton Mathew, who was coming with Hobson as the Surveyor-General to the new colony. At daylight on the following morning the Three Kings were sighted, and shortly after the main-

he is to expect from these persons I do not know, but they are evidently sent to New Zealand because Sir George Gipps has no use for their services here, and was consequently anxious to get rid of them." Dr. Martin's *New Zealand Letters*.

[1] The ship *Westminster* was also engaged to convey stores to New Zealand so soon as word should be received of the success of Captain Hobson's mission. The *Westminster* reached the Bay of Islands on March 17, 1840, bringing with her Mr. and Mrs. Burrows and Mr. and Mrs. Matthew for the C.M.S. Mission.

land came into view. Two days were spent in beating up the coast, and again at daylight on the 29th, the *Herald* entered the Bay of Islands, drifting with the tide, there being not a breath of wind. All the morning was spent in this tedious process, and it was not till eleven o'clock that the anchor was cast in front of the little town of Kororareka.[1] Across the Bay the Union Jack was flying in front of Mr. Busby's residence, but what most attracted the attention and excited the interest of those on board was the French tricolour floating from a staff upon the hill-side above the township. "What this may indicate," wrote Mr. Mathew in his diary, "we have yet to learn—whether it is merely a French Missionary establishment or whether a French frigate is at anchor in the Bay and has anticipated us, we shall soon discover."

[1] I am indebted to Mr. H. M. Stowell (Hare Hongi) for the following note on the origin and meaning of *Kororareka*; the ancient name of the town of Russell.

Kororareka has several original native names:

1. *O-hiato*: *hiato* means confined, of circumscribed area; and this describes its situation exactly.

2. *Wai-taha-rua*: This means, two-sided water, or, the double waterside. This also describes its situation for it has a fine frontage to the Bay itself, and an arm of the Bay runs up to its back-door (so to speak).

3. *Kororareka*: *Korora-reka*, means Sweet-penguin. This has remained its favourite name, and it originated in the following incident: An old high chief lay here dying. He expressed a wish to taste a little of the penguin bird before dying. Now this bird is a rarity in those waters. So many young men of the tribe went off in their canoes and scoured the headlands, isles, and islets for miles around the Bay. At length two young men were fortunate enough to discover a penguin, a real *Korora*, or blue penguin, which they managed to capture. They hastened back with their catch, and the bird was feathered and cleaned and boiled in the ancient manner of boiling. This was to place the bird in a deep wooden bowl, cover it well with water, and keep that water boiling by dropping red-hot stones in it from an oven by its side.

The bird being cooked in this way was served up to the old chief, but being unable to chew or to eat any portion he begged for a little of the water (soup) in which it had been boiled. This was brought to him, and having been assisted to a partially seated position he drank some of the "soup," after which he sank back on his pillow, murmured: "*Ka reka te Korora*," and immediately expired. Now, *Ka reka te Korora*, means: How *sweet* is the Penguin.

CHAPTER IV

THE MAORI MAGNA CHARTA

So soon as the *Herald* was come to anchor she was boarded by Mr. Busby and three of the resident Missionaries, from whom Captain Hobson learned that his apprehensions regarding French occupancy were groundless, the tricolour on the hill indicating no more than the whereabouts of Bishop Pompallier's church. One of the visitors who had come thus early to pay his respects to the new Governor was Mr. Colenso, with whom Captain Hobson entered into an arrangement for the printing, at the press of the Church Missionary Society, of circular letters inviting the chiefs to meet him at Mr. Busby's residence at Waitangi on the following Wednesday, for the purpose of discussing the proposals of the British Government; and to all the British residents requesting their presence at the Mission church at Kororareka on the following day, there to hear Her Majesty's Commission under the Great Seal, extending the limits of the colony of New South Wales, and also Her Majesty's Commission under the Royal signet and Sign manual, appointing Captain Hobson as Lieutenant-Governor over such part of that colony as might be acquired in Sovereignty in New Zealand. These invitations were in circulation on the following morning, messengers being despatched to inform the chiefs, while the European residents perused the notice issued to them with marked interest and mixed feelings. During the afternoon Captain Hobson, accompanied by Captain Nias and his officers, landed on the Kororareka beach, and walking to the church there read his Letters Patent in the presence

of the assembled people, forty of whom so far signified their approval of the proceedings as to subscribe their names to the document. The proclamations framed by Sir George Gipps and his Executive were also read, the first announcing that Her Majesty's authority had been asserted over British subjects in New Zealand; the second, which was by no means so popular, acquainting the public of the fact that Her Majesty did not deem it expedient to acknowledge as valid any titles to land in New Zealand which were not derived from, or confirmed by, a grant from the Crown.

These ceremonies concluded, the intervening days were spent in completing arrangements for the fateful gathering on the 5th, not the least arduous duty being the drafting of the treaty, upon the acceptance or rejection of which everything would depend. The exigencies of the position demanded that the greatest care should be exercised in framing the terms of the document,[1] because while it was desired that the proposal of the Crown should be stated with the utmost frankness, the least looseness of expression might imperil the whole project by raising ungrounded alarm in the minds of the natives.

To guard against this it was necessary that those concerned in the preparation of the treaty should have not only a full knowledge of the Crown's intentions, but also an intimate acquaintance with the subtleties of the native character. This latter qualification neither Captain Hobson nor the members of his staff possessed even in a remote degree. To add to their difficulties, Captain Hobson began now to experience the first symptoms of that illness which in less than three years proved fatal to him. He became indisposed, and was unable to leave the *Herald*. In the seclusion of his cabin, however, he devoted himself to an effort to reduce to concrete terms the obligations in which the Crown was prepared to involve itself,

[1] The number and extent of the erasures in the original draft indicate that the greatest care was taken in its composition by those concerned.

THIS RELIC OF THE TREATY CAME INTO THE AUTHOR'S POSESSSION AFTER THE VOLUME WAS PRINTED AND IS NOW INSERTED AS A SUPPLEMENT

No te 30 o nga ra o Hanuere, 1840

E taku hoa aroha,

Tenei ano taku ki a koe; na, tenei ano tetahi kaipuke manawa kua u mai nei, me tetahi Rangatira ano kei runga, no te Kuini o Ingarani ia, hei Kawana hoki mo tatou. Na, e mea ana ia, kia huihuia katoatia mai nga Rangatira o te Wakaminenga o Nu Tireni, a te Wenerei i tenei wiki tapu e haere ake nei, kia kitekite ratou i a ia. Koia ahau ka mea atu nei ki a koe, e hoa, kia haere mai koe ki konei ki Waitangi, ki taku kainga ano, ki tenei huihuinga. He Rangatira hoki koe no taua Wakaminenga tahi. Heoi ano, ka mutu taku.

Naku,

Na tou hoa aroha,

Na te PUHIPI.

KI A TAMATI WAKA NENE.

TEXT OF THE INVITATION SENT TO TAMATI WAKA NENE TO ATTEND THE MEETING OF CHIEFS AT WAITANGI, 5TH FEBRUARY, 1840.

(ORIGINAL IN THE AUCKLAND MUSEUM).

TRANSLATION

(By H. M. STOWELL).

Of the 30th day of January, 1840.

O my dear friend.

Herewith something special from me to you. A Man-o-war vessel has called here particularly, with a certain Chief on board. He is sent by the Queen of England, as a Governor for us.

Now, he desires that as many representative New Zealand chiefs as possible be gathered together by Wednesday of next week to see him.

I now therefore say unto you, O friend, make your arrangements to come along here to Waitangi, to my home here, to this gathering and meeting. For you yourself are a typical representative chief and will be welcomed to the meeting as such.

That is all, mine ends here,

From your sincere friend,

From Te PUHIPI (Mr. Busby)

To
Tamati Waka Nene.

and the reciprocating advantages it would require from the natives. In this he achieved but meagre success, and conscious of failure he despatched his chief clerk, Mr. George Cooper, to Mr. Busby, giving him his rough notes together with a request that the erstwhile Resident might favour him with his opinion as to their suitability as the basis of the treaty.

Mr. Busby had no hesitation in saying that he regarded them as quite unsuitable, but offered to prepare the draft treaty for Captain Hobson's consideration, if such a service would be acceptable. To this Mr. Cooper replied that nothing would afford His Excellency greater pleasure, as he recognised that Mr. Busby's seven years of official training and native experience had furnished him with many qualifications for the task. The result was entirely satisfactory. The draft prepared by Mr. Busby was adopted by Captain Hobson without alteration beyond the transposition of certain paragraphs, which did not in any degree affect the spirit or the sense of what has long been regarded as the Maori Magna Charta.

A pleasant interlude was afforded by the presentation to Captain Hobson of an Address of Welcome by forty-five of the settlers, in which they expressed their gratification at his safe arrival, and at the early prospect of the establishment of British law and authority in the Islands, which had long been the desire nearest to their hearts. They expressed equal gratification at the appointment of a gentleman as Lieutenant-Governor so distinguished for courage, firmness, justice, and humanity as Captain Hobson, presaging as it did a bright era of prosperity for the colony. They expressed their readiness to await with patience the unfolding of a scheme of government in which the best interests of all were involved, and promised not only to continue the service of loyal subjects of the Queen, but to aid with their best exertions her representative in establishing order, law, and security for life and property in what they were pleased to designate " this improving and important colony."

As was becoming of him, Captain Hobson replied in

most gracious terms, which seemed to indicate the existence of a useful harmony between the new Governor and the more decently-disposed settlers.

Not so the speculative element, who were deeply chagrined at the unexpected turn affairs had taken. To these law-breakers the arrival of Hobson meant the complete suspension of their future operations, and what was equally distasteful, a revision of their past transactions. Their hope, therefore, lay in preventing the consummation of the official plan, and before the Lieutenant-Governor had been at the Bay twelve hours, the lawless and the land-grabber were busy poisoning the native mind against the Governor's proposal, telling them with many dark insinuations and bitter taunts, that now they were to be made *taurekareka*—the " slaves " of the Queen.

These mischievous suggestions naturally had a disquieting influence upon the minds of many of the chiefs, who had not as yet gathered the full purport of the impending change, and whose haughty spirit rebelled against the prospect of any loss in tribal dignity. Fortunately they were able to appeal with confidence to the Missionaries, and to the credit of that body it must be said that they were as loyal to their country as they had already proved themselves faithful to their church. Mr. Henry Williams, the head of the Church Missionary Society's group of Missionaries, than whom no man wielded greater influence with the natives at this period, was not at the Bay of Islands when the *Herald* arrived. He had just returned to the Waimate Mission station from the Manawatu, whither he had gone with Tamihana Te Rauparaha, and Matene te Whiwhi, to instal the Rev. Octavius Hadfield in his West Coast charge. The hurried decision of the Home Government to forestall the New Zealand Company had been as unknown to him as it was to the other residents of New Zealand, and the first intimation he had that the change he so much desired was near fruition, was a letter from the Bishop of Australia informing him of Captain Hobson's arrival in Sydney, and the rumoured report of his mission. Bishop Broughton earnestly

advised the Missionary to assist Captain Hobson to the end that success might crown his efforts.[1]

Closely following upon this came a letter, dated January 30, 1840, from Captain Hobson, inviting Mr. Williams to meet him at his earliest convenience, and although it was late at night when the messenger arrived, he made immediate preparations to comply with the request. Leaving home early in the morning the energetic Missionary boarded the *Herald* that afternoon, and congratulated the newly-arrived Governor upon his coming, which indeed was a pleasant surprise. He assured him of the hearty support of the Missionaries in the purpose of establishing Her Majesty's authority in the Islands, and of his own personal aid to any extent that it might be of service to him.

Of this offer Captain Hobson availed himself a few days later, when at 4 P.M. on February 4 he brought to him the draft of the treaty which had been prepared for submission to the chiefs at Waitangi on the morrow, and asked that he might be good enough to translate it into the native language. In this Mr. Williams had the assistance of his son Edward, who was then regarded as the scholar *par excellence* in the Nga-Puhi dialect, the purest of all the dialects of the Maori tongue.

The task of translation was necessarily a difficult one, it being essential that there should be a complete avoidance of all expressions of the English for which there was no equivalent in Maori, and yet permitting no alterations which would destroy the original spirit and tenor of the treaty. Upon its completion the work was revised by Mr. Busby, who suggested the elimination of the word *huihuinga* used by the translators, and the substitution of *whakaminenga* to more adequately express the idea of the Maori Confederation of Chiefs. With this exception the

[1] "Upon the fullest consideration my judgment inclines me strongly to recommend you, and through you, all the other members of the Mission, that your influence should be exercised amongst the chiefs attached to you, to induce them to make the desired surrender of sovereignty to Her Majesty."—Bishop Broughton's letter to Mr. Henry Williams.

translation was adopted, and the excellence of its rendering may be judged from the fact that though it has been many times tried by the most accomplished of Maori scholars, the translation has never been shaken, and stands to-day a perfect native reflex of the European mind, conveying in all probability a clearer view to the Maori of what the treaty meant than the English version has done to the average *Pakeha*.

The scene chosen for the conference with the chiefs was the lawn in front of Mr. Busby's house,[1] which stands upon a gently sloping promontory directly opposite the old town of Kororareka. A large and commodious building, with its French casements, cedar doors, and old-fashioned fittings, it looks out across the Bay from the seclusion of its plantation of imported trees. Down between the house and the sea beach there runs a grassy slope, at the termination of which rises a grove of the beautiful *Pohutukawa*, which had just shed their blaze of Christmas bloom when Captain Hobson arrived.

To the right flows the tidal waters of the Waitangi River, whose falls four miles beyond its mouth have given their name to the district.[2] Upon the flat which fringes the river bank, the Maoris camped amongst the cabbage palms, and the smoke of their fires might have been seen curling upwards until it was lost in the mists of the morning air. Still farther to the right, and across the river, under the forest-clad hill, nestled the little Mission station of Paihia, where Mr. Colenso was industriously producing copies of the New Testament from his primitive printing-press. Away to the left, in Oihi Bay, stands the cross marking the spot where the first Christian sermon was preached to the Maoris by Samuel Marsden, on Christmas

[1] Mr. Busby's house was built of Australian hard wood, and though upwards of eighty years old is still standing in an excellent state of preservation. The property is now occupied by Mr. Theo. A. Izard, who recently unearthed on the site where the marquee was erected the iron shoe of a military tent-peg of the period, doubtless one that was used in connection with the signing of the Treaty of Waitangi.

[2] Waitangi signifies "crying water," and there were many people superstitious enough to believe that the choice of this spot was a bad omen.

Day of 1814, and between these two points where they had first received the spoken and the written Word, the natives were now asked to decide a question that very largely involved their political salvation.

The morning of the auspicious day (Wednesday, February 5) broke with nature's approving smile upon it. The sun shining brightly in the Heavens lit up the blue waters of the Bay, the slopes of the brown hills, the shadows of the sombre forest in which the birds sang even more blithely than was their wont. Many of the natives had arrived during the previous day, and the face of the harbour was still alive with canoes speeding from all directions to the place of meeting, their crews keeping time with their paddles to the chant of the excited *Kai tuki*[1] as he stood upon the centre thwart, urging by word, song, and gesture, a more vigorous bending of broad backs and straining of tawny arms in the hope of outstripping his opponents in the race to Waitangi.

On shore a large marquee had been erected upon the grassy lawn in front of Mr. Busby's residence, towards which the bunting of the *Herald* had been liberally applied, the Union Jack waving gaily over the whole scene until the official proceedings were begun, when it was lowered as an indication that sovereignty had not yet been ceded to the Queen. The ships in the harbour had likewise marked the occasion by displaying all their bright flags and in the brilliant sunlight the scene was one of picturesque animation, not the least interesting feature being the blue-shirted settlers—British and American[2]—promenading on the lawn. As a counterpoise to these there were the groups of natives squatting on the ground, each tribe discussing with ample gesticulation and volubility

[1] The man who stands in the centre of the canoe and gives the time to the rowers.

[2] Amongst the Americans present were several of the scientists attached to the United States exploring expedition, under Commander Wilkes, who had assembled at the Bay of Islands to await the return of their vessels from the Antarctic. With the exception of Bishop Pompallier the Frenchmen at the Bay were conspicuous by their absence, believing that in this way they were offering a protest against the proceedings.

the treaty from their own immediate point of view. "Beyond the grounds," writes Dr. Bright, "refreshment was vended to the Europeans and many a cork (adopting a poetic phrase) escaped its glassy confines, to let out, not a lake, but Dunbar's foaming stout, or Hodge's paler streams. Nor were more patrician fluids wanting; nor yet ardent cognac; nor the clear burning fluid of St. Giles' dames; nor the spirit of storms, rum, which sailors gulp, ingulphing a torid zone within no temperate one—all waters of fire to the sober Maori, and which they might be taught are waters that the Devil navigates to reach the island of the soul. Nor was there wanting solid aliment—pork, salt and fresh, in various forms of hams, cold roast, pork pies, and baskets of bread and biscuit all to be transmuted into money. Troops of natives came from all directions to the *korero* with the *rangatira nui*, or great gentleman from England. You might inspect a group of brown skins and then a group of white skins, and with but little puzzling discern the same stage-stock of feelings common to both. The Europeans were very numerous but the natives were more so, many who came from a distance carrying guns. "What, thought I, if these savages refuse to accede to the treaty, is to hinder them from driving us into the sea, or into their ovens? What greater proof of their sovereignty than their willingness to yield it up to us?"

At 9 o'clock the Lieutenant-Governor, accompanied by Captain Nias, landed at Waitangi, and they were shortly afterwards followed by the officers of the ship, Lieutenant Shortland and the members of the civil staff, and by the Missionaries who were resident in and about the Bay of Islands.

During this time Captain Hobson, Mr. Busby, and Mr. Henry Williams, were engaged in a final discussion upon the treaty and its translation. At 10.30 Bishop Pompallier, the newly-appointed Roman Catholic Bishop of Oceania, dressed in full canonicals [1] and accompanied by

[1] This was a clever strategetical move on the part of the Bishop, who, though protesting that he was not concerned in a political negotia-

one of his priests [1] arrived from Kororareka, and without displaying any hesitation, walked straight to Mr. Busby's house, and entered the room in which the Lieutenant-Governor and his associates were in close conference. The Bishop's manner was so full of confident assurance that the two constables [2] standing on guard at the door were so completely taken by surprise that they failed to challenge the cleric's right to enter. The incident was equally startling in its dramatic suddenness to all the astonished onlookers, and it made a considerable impression upon the natives. In their eyes the pomp and circumstance implied by the ecclesiastical dress meant much, while the air of superior authority with which the proceeding had been carried out conveyed the suggestion to them that this man must indeed be a *rangatira*.[3]

A buzz of comment arose, the natives whispering amongst themselves, "*Ko ia anote tino rangatira! Ko Pikopo* [4] *anake te hoa mo te Kawana.*" "This surely is the chief gentleman. The Bishop only is the companion for the Governor."

The importance of these comments were not lost upon the Church Missionaries, who were deferentially standing outside, and a hurried conference resulted in their deciding to be on equal terms with the Bishop. They accordingly moved towards the house, and had just reached the verandah when an announcement was made that the

---

tion, evidently saw the advantage of utilising the occasion to make an impression on the native mind in the interests of his Church. In his published account of the event Bishop Pompallier makes it appear that the Protestant Missionaries had been circulating the statement amongst the natives that he would not "dare" to put in an appearance at the meeting. He was, however, specially invited by Captain Hobson, and he made the most of the opportunity thus given him.

[1] The name of this priest does not seem to have been preserved.

[2] They were members of the Mounted Police Force which Captain Hobson had brought with him from Sydney.

[3] *Rangatira*: Chief, gentleman, one in authority.

[4] In his discussions with the Maoris, Bishop Pompallier had stressed the point that he held the advantage over the Protestant Missionaries in that he was a member of the Episcopacy. The best attempt on the part of the natives to render into their own language the word Episcopo, in its varied forms, was "*Pikopo*," hence the Bishop and his converts became known as *Pikopo*.

Lieutenant-Governor intended to hold a levee in order that all who had not already been introduced to him, and desired to have that privilege, might do so by entering at one door and passing out at another. While the introductions were proceeding Bishop Pompallier remained in the room, and as the Missionaries were unable to take their position with him owing to the crush in the narrow passage, they made a virtue of necessity and coldly declined to participate in the ceremony.

The levee over, and it was not a lengthy proceeding, Captain Nias and Mr. Busby, preceded by the representatives of the police, came out of the house followed by the Lieutenant-Governor, and in this order the procession was moving towards the tent when the Bishop and his associate stepped briskly forward and took their positions immediately behind Captain Hobson, thus giving the Protestant Missionaries no option but to follow in his wake. "Brethren," said Mr. Colenso, "this won't do. We must never consent to this position."

"No," replied the Rev. Richard Taylor, "I will never consent to follow Rome," and so saying he and his brethren quietly withdrew from the procession and made their way unofficially towards the marquee.

A raised platform had been erected at the end of the marquee, and on this the Lieutenant-Governor and Captain Nias took their seats. Bishop Pompallier and his priest were shown to chairs on the left, and Mr. Henry Williams was directed to a chair on the Governor's right. The other missionaries, Messrs. King, Kemp, Baker, Clarke, and Colenso[1] were modestly standing behind this group when Lieutenant Shortland, who was acting as Secretary to the Governor and as Master of Ceremonies, plucked Mr. Colenso by the sleeve of his coat and said, "Go over to that end and support your cloth," an intimation which, according to Mr. Colenso, they lost no time in attending to, ranging themselves as best they could behind Mr. Williams.

[1] The Revs. Ironside and Warren, of the Wesleyan Mission, arrived at a later hour, with the contingent of Hokianga natives, including Tamati Waaka Nēne; and on the following day they were amongst the witnesses to the signatures.

Meanwhile the crowd had been accumulating, and were rapidly finding positions of vantage within the tent. "The scene," says an eye-witness,[1] "was very interesting and impressive. In the centre of the narrow raised platform were the Governor and Captain of the man-of-war in full uniform, on the Governor's left were Mr. Busby and the Roman Catholic Bishop in canonicals, his massive gold chain and crucifix glistening on his dark purple-coloured habit. On the right of His Excellency were the members of the Church of England Mission, in plain black dresses. The different officers of the *Herald* together with His Excellency's suite stationed themselves as best they could—some here and there on the platform, and some immediately before it. In front of the platform, in the foreground, were the principal native chiefs of several tribes, some clothed with dog-skin mats made of alternate longitudinal stripes of black and white hair. Others were habited in splendid-looking new woollen cloaks[2] of crimson, blue, brown, and plaid, and indeed of every shade of striking colour such as I had never before seen in New Zealand, while some were dressed in plain European, and some in common native dresses. Near by, in the midst, stood Hakitara, a tall native of the Rarawa tribe, dressed in a very large and handsome silky white *Kaitaka* mat—a garment of the finest and best kind, and only worn by superior chiefs—fringed with a deep and dark coloured

[1] *Authentic and Genuine History of the Signing of the Treaty of Waitangi*, by the Rev. W. Colenso.

[2] These were all of foreign manufacture, and were the gifts of Bishop Pompallier. On this point Jameson says: "But the most virtuous of human actions are liable to be misinterpreted and misjudged, and M. de Pompallier's liberality to the natives was uncharitably stigmatised as an attempt to bribe and lure them to the adoption of the Catholic persuasion. This conduct was invidiously contrasted with that of the Church of England and Wesleyan Missionaries, who deemed it a point of duty to hold out no temptation to the cupidity of the natives, as an inducement for them to become Christians, and also to encourage among them regular habits of industry, gave them nothing except in fair exchange for agricultural produce or for services performed. The Protestant Missionaries have laboured with great zeal and success amongst the New Zealanders. But in acknowledging their merits, we, in common justice, cannot condemn the motives of M. de Pompallier."

woven border of a lozenge and zigzag pattern, the whole of native and national design and manufacture. The sunlight streaming down from an aperture in the top of the tent on this beautiful white dress, admired by natives and Europeans alike, threw the figure of this chief into very prominent and conspicuous relief, forming a fine contrast to the deep and dark shades of colour around; whilst here and there a *hani* or *taiaha*[1] was seen erected adorned with the long flowing white hair of the tails of the New Zealand dog, and crimson cloth and red feathers. In the distance the raven black and glossy locks of the natives, gracefully ornamented with the snow-white and drooping feathers of sea-birds, and of the white crane, forming a striking contrast, added much to the *tout ensemble*. Around the sides of the tent were the whites, residents, and settlers, by far the greater part being very respectably dressed; and outside of them, against the walls of the tent were flags of different nations, which from the brightness of their colours, gave a charming air of liveliness to the whole, the table being covered by the vivid colours of the Union Jack."

As Captain Hobson rose from his seat the hum of human vioces which filled the tent suddenly ceased. Animated conversation gave way to an air of silent expectancy as the Queen's representative began to speak in slow and measured tones. His speech had been carefully prepared, and for the purposes of greater accuracy he relied upon extensive notes.

"Her Majesty Victoria, Queen of Great Britain and Ireland," he said, "wishing to do good to the chiefs and people of New Zealand, and for the welfare of her subjects living amongst you, has sent me to this place as Governor. But as the law of England gives no civil powers to Her Majesty out of her dominions, her efforts to do you good will be futile unless you consent. Her Majesty has commanded me to explain these matters to you, that you may understand them. The people of Great Britain are, thank God! free, and so long as they do not transgress

[1] A short spear.

MR. BUSBY'S RESIDENCE.

Where the Treaty was signed.

UNIV. OF
CALIFORNIA

the laws, they can go where they please, and their sovereign has no power to restrain them. You have sold them lands here and encouraged them to come here. Her Majesty, always ready to protect her subjects is also always ready to restrain them. Her Majesty the Queen asks you to sign this treaty, and to give her that power which shall enable her to restrain them. I ask you for this publicly: I do not go from one chief to another. I will give you time to consider the proposal I shall now offer you. What I wish you to do is expressly for your own good, as you will soon see by the treaty. You yourselves have often asked the King of England to extend his protection unto you. Her Majesty now offers you that protection in this treaty. I think it is not necessary to say any more about it. I will therefore read the treaty." [1]

In a clear voice His Excellency then read the treaty in English for the benefit of the European settlers, the terms of the document being as follows:

TREATY OF WAITANGI

HER MAJESTY VICTORIA, Queen of the United Kingdom, of Great Britain and Ireland regarding with her Royal favour the Native chiefs and tribes in New Zealand, and anxious to protect their just rights and property, and to secure to them the enjoyment of peace and good order, has deemed it necessary in consequence of the great number of Her Majesty's subjects who have already settled in New Zealand, and the rapid extension of emigration both from Europe and Australia which is still in progress, to constitute and appoint a functionary properly authorised to treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands. Her Majesty, therefore, being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary laws and institutions, alike to the native population and to her subjects, has been graciously pleased to empower and authorise me, William Hobson, a Captain in Her Majesty's Royal Navy, Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty, to invite the confederate and independent chiefs of New Zealand to concur in the following articles and conditions:

[1] "Captain Hobson spoke briefly but emphatically and with strong feeling."—Felton Mathew.

Article the First

The chiefs of the Confederation of the United tribes of New Zealand, and the separate and independent chiefs who have not become members of the Confederation, cede to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of sovereignty which the said confederation or individual chiefs respectively exercise or possess, or may be supposed to exercise or possess over their respective territories as the sole Sovereigns thereof.

Article the Second

Her Majesty, the Queen of England, confirms and guarantees to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession; but the chiefs of the United tribes and the individual chiefs yield to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty, the Queen of England, extends to the natives of New Zealand her Royal protection, and imparts to them all the rights and privileges of British subjects.

W. HOBSON,
Lieutenant-Governor.

Now, therefore, we the chiefs of the Confederation of the United tribes of New Zealand, being assembled in congress at Victoria, in Waitangi, and we the separate and independent chiefs of New Zealand, claiming authority over the tribes and territories which are specified after our respective names, having been made fully to understand the provisions of the foregoing treaty, accept and enter into the same in the full spirit and meaning thereof; in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

When he had concluded, he turned to Mr. Henry Williams, and invited him to read to the natives the translation which had been prepared in the Maori language.

"In the midst of profound silence," Mr. Williams wrote in subsequent years, "I read the treaty to all

assembled. I told all to listen with care; explaining clause by clause to the chiefs, giving them caution not to be in a hurry, but telling them that we, the Missionaries, fully approved of the treaty, that it was an act of love towards them, on the part of the Queen, who desired to secure to them their property, rights, and privileges. That this treaty was a fortress to them against any foreign power which might desire to take possession of their country, as the French had taken possession of Otiaiti."

MAORI TRANSLATION OF THE TREATY OF WAITANGI AS PRINTED AT THE PRESS OF THE CHURCH MISSIONARY SOCIETY, PAIHIA

Ko, WIKITORIA, te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu, o Nu Tirani, i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou whenua, a kia mau tonu hoki te Rongo ki a ratou me te ata noho hoki kau wakaaro ia he mea tike kia tukua mai tetahi Rangatira hei kai wakarite ki nga tangata Maori o Nu Tirini. Kia wakaaetia e nga Rangatira Maori te Kawanatanga o te Kuini ki nga wahi katoa o te wenua hei me nga motu. Na te mea hoki he tokomaha ke nga tangata o tona iwi kua noho ki tenei wenua, a e mai nei.

Na, ko te Kuini e hiahia ana kia wakaritea te Kawanatanga, kia kaua ai nga kino e puta mai ki te tangata Maori ki te pakeha e noho enoho ture kore ana.

Na, kau pai te Kuini kia tukua a hau, a Wiremu Hopihona, he Kapitana i te Roiara Nawi, hei Kawana mo nga wahi katoa o Nu Tirini, e tukua aianei amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirini me era Rangatira atu enei ture ka korerotia nei.

Ko te tuatahi

Ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirini, te tino Rangatiratanga o o ratou wenu o ratu kainga me o ratu taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te tuatoru

Hei wakaritenga mai hoki mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata Maori katoa o Nu Tirani. Ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

WILLIAM HOBSON,
Consul and Lieutenant-Governor.

Na ko matou, ko nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, ka huihui nei ki Waitangi. Ko matou hoki ko nga Rangatira o Nu Tirani, ka kite nei i te ritenga o enei kupa, ka tangohia, ka wakaaetia katoatia e matou. Koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi, i te ono o nga ra o Pepuere, i te tau kotahi mano, ewaru rau, ewa tekau, o to tatou Ariki.

A TRANSLATION OF THE TREATY OF WAITANGI INTO ENGLISH FROM THE ORIGINAL MAORI

Here's Victoria, Queen of England, in her gracious remembrance towards the chiefs and tribes of New Zealand, and in her desire that the chieftainships and their lands should be secured to them and that obedience also should be held by them, and the peaceful state also; has considered it as a just thing, to send here some chief to be a person to arrange with the native men of New Zealand, that the Governorship of the Queen may be assented to by the native chiefs in all places of the land, and of the islands. Because too many together are the men of her tribe who have sat down in this land and are coming hither.

Now it is the Queen who desires that the Governorship may be arranged that evils may not come to the native men, to the white who dwells lawless. There! Now the Queen has been good that I should be sent, William Hobson, a Captain of the Royal Navy, a Governor for all the places in New Zealand that are yielded now or hereafter to the Queen. She says to the Chiefs of the Assemblage (Confederation) of the tribes of New Zealand, and other chiefs besides, these laws which shall be spoken now.

Here's the first: Here's the chief of the Assemblage, and all the chiefs also who have not joined the Assemblage mentioned, cede to the utmost to the Queen of England for ever continually to the utmost the whole Governorship of their lands.

Here's the second: Here's the Queen of England arranges and confirms to the chiefs, to all the men of New Zealand the entire chieftainship of their lands, their villages, and all their property.

But here's the chiefs of the Assemblage, and all the chiefs

besides, yield to the Queen the buying of those places of land where the man whose land it is shall be good to the arrangement of the payment which the buyer shall arrange to them, who is told by the Queen to buy for her.

Here's the third: This, too, is an arrangement in return for the assent of the Governorship of the Queen. The Queen of England will protect all the native men of New Zealand. She yields to them all the rights, one and the same as her doings to the men of England.

Now here's we: Here's the chiefs of the Assemblage of the tribes of New Zealand who are congregated at Waitangi. Here's we too. Here's the chiefs of New Zealand, who see the meaning of these words, we accept, we entirely agree to all. Truly we do mark our names and marks.

This is done at Waitangi on the six of the days of February, in the year one thousand eight hundred and four tens of our Lord.

The whole subject was now before the meeting for discussion, and the chiefs were invited to express their views upon it, or to make any enquiries upon points that were still obscure. There being some little hesitancy displayed Mr. Busby rose and, addressing the natives, assured them that the Governor had not come to deprive them of their lands, but rather to secure them in possession of what they had not already sold. He reminded them that he had frequently given them his word that land not properly acquired from them would not be recognised as the property of the person claiming it, but would be returned to the natives, to whom it rightly belonged. He was proceeding to say that this promise the Governor would of a certainty be prepared to carry out, when suddenly he was interrupted by Te Kemara, a chief of the Ngatikawa tribe, who, springing from his place in front of the platform exclaimed:

"Health to thee, O Governor. This is mine to thee, O Governor. I am not pleased towards thee. I will not consent to thy remaining here in this country. If thou stayest as Governor then perhaps Te Kemara will be judged and condemned. Yes, indeed, and more than that—even hung by the neck. No, no, no, I shall never say 'Yes' to your staying. Were all to be on an equality, then perhaps Te Kemara would say, 'Yes.' But for the

Governor to be up and Te Kemara down—Governor high up, up up, and Te Kemara down low, small, a worm, a crawler. No, no, no. O Governor! this is mine to thee, O Governor! my land is gone, gone, all gone. The inheritances of my ancestors, fathers, relatives, all gone, stolen, gone with the Missionaries. Yes, they have it all, all, all. That man there, the Busby, and that man there, the Williams, they have my land. The land on which we are now standing this day is mine. This land, even this under my feet, return this to me. O Governor! return me my lands. Say to Williams 'Return to Te Kemara his land.'" With outstretched finger he ran and pointed to the Missionary, "Thou, thou, thou, thou bald-headed man, thou hast got my lands. O Governor! I do not wish thee to stay. You English are not kind to us like other foreigners. You do not give us good things. I say go back, go back, Governor, we do not want thee here in this country. And Te Kemara says to thee, go back, leave to Busby and to Williams to arrange and to settle matters for us natives as heretofore."

Te Kemara was a master in the art of Maori oratory, and he delivered this speech with much simulated anger. Gesture and grimace were alike extravagant even for a native; his eyes rolled in violent oscillations and flashed with demoniacal fire, while his whole body trembled as though convulsed by pent-up rage. He made a brave show of injured innocence, especially when pleading for the return of his lands. And yet it was not serious: it was mere theatrical display; for not long afterwards he gave evidence before the Land Claims Commissioners, and testified to the fair sale of his land. For the present, however, Maori vanity was satisfied—Te Kemara had made a great speech.

The serious impression made by the hostile deliverance of the Ngatikawe chief was somewhat dispelled by the diversion created when Rewa, of Ngaitawake rose, and, addressing His Excellency in the best English he could command said, "How d'ye do, Mr. Governor?" The sally was so unexpected that it immediately created a roar of

laughter, in which all present joined. But Rewa soon became more earnest. He had evidently no intention of being frivolous—"This is mine to thee, O Governor!" he impressively said. "Go back. Let the Governor return to his own country. Let my lands be returned to me which have been taken by the Missionaries—by Davis and by Clarke and by who and who besides. I have no lands now—only a name,[1] only a name. Foreigners come, they know Mr. Rewa, but this is all I have left—a name! What do native men want of a Governor? We are not whites or foreigners. This country is ours, but the land is gone. Nevertheless we are the Governor—we the chiefs of this our Fathers' land. I will not say 'Yes' to the Governor's remaining. No, no, no, return. What! this land to become like Port Jackson and all other lands seen by the English. No, no, return. I, Rewa, say to thee, O Governor, go back. Send the man away. Do not sign the paper. If you do you will be reduced to the condition of slaves, and be compelled to break stones on the roads. Your land will be taken from you and your dignity as chiefs will be destroyed."

The next speaker was Moka, a chief of the Patukeha tribe, from Rawhiti, the burden of whose speech was also against the acceptance of the treaty. "Let the Governor return to his own country. Let us remain where we are. Let my lands be returned to me—all of them—those that are gone with Baker. Do not say, 'The lands will be returned to you.' Who will listen to thee, O Governor? Who will obey thee? Where is Clendon? Where is Mair?[2] Gone to buy, buy our land, notwithstanding the 'book'[3] of the Governor."

[1] Rewa once replied to a European who had chided him because he had ceased to pay him his customary visits, "I was ashamed to go, because I had no present to offer you. Formerly, when I went to see my friends I always carried them a present of pigs and potatoes, but I am a poor man now. I have sold all my land and I have nothing to give my friends."

[2] Mr. Gilbert Mair was a merchant at Kororareka. Mr. James E. Clendon was likewise a merchant there, and had been Assistant British Resident at Hokianga. He was at this period U.S.A. Consul.

[3] Meaning the Proclamation referring to land titles.

On this statement being interpreted to him Captain Hobson immediately stopped the speaker, and in the most earnest manner assured the gathering that lands unjustly held would be returned, and that after the date of the Proclamation all land, however purchased, would be the subject of enquiry, and no purchases would be lawful until sanctioned by the Crown.

This scarcely sufficed to satisfy the sceptical Moka, who replied, as he advanced close up to the platform, "That is good, O Governor! that is straight. But stay, let me see. Yes, yes, indeed! Where is Baker? Where is the fellow? Ah, there he is—there standing. Come, return to me my lands?"

Here the orator paused, awaiting a reply. His injunction was addressed to Mr. Baker in the most direct and personal way, so that it could not be evaded. Moka stood leaning against the edge of the platform, looking directly at the Missionary, upon whom all eyes were immediately turned. There was profound silence and the suspense was acute. Mr. Baker did not flinch but quietly replied, "*E hoki, koia*"; in other words, "We shall see whether they will return."

This retort was comfortless to Moka, who exclaimed, "There, there, that is as I said. No, no, no, all false, all false, alike. The lands will not return to me."

He was in the midst of this lamentation when he was again interrupted. A European came forward, and addressing His Excellency said that the speeches of the natives were not being faithfully interpreted by Mr. Williams, nor were His Excellency's remarks being fully reported to the natives. He said the natives complained of being robbed, and by a gesture indicated that Mr. Williams was the robber. This he followed up by venturing to suggest that a Mr. Johnson, who was present, could do the work with greater satisfaction to both parties. This was the first open declaration of the general discontent which pervaded the settlers, who were angry because of the Proclamation which had so summarily put an end to their speculations, and which they felt was playing them unfair. They had

heard that a Charter had been granted to a rich Company in England, while many of them who had worked long in the land were being, as they thought, over-reached by the Government. But the honest settler was not more angry than the land-jobbers, the gamblers of the south, who stood on the outskirts of the crowd, "looking like smugglers foiled in a run, or a pack of hounds lashed off their dying prey," and appeared as if they were taking a vengeful pleasure in thwarting the wishes of authority. Many viewed the proceedings with malignant eyes and smouldering mischief in their hearts, remaining silent themselves, yet prompting others to interrupt; hence these accusations of false interpretation, these irrelevant observations about the Missionaries and Mr. Busby taking advantage of their privileged positions to unfairly acquire land.

Captain Hobson, always willing to be affable, and desirous that nothing should give rise to misunderstanding, begged Mr. Johnson, who was a dealer in spirits at Kororareka, to come forward and do him the favour of making everything clear to natives and Europeans alike.

Johnson, however, was not so confident of his attainments as a Maori linguist as his friend was, and in reply to His Excellency's question whether he fully understood the native language he replied, " Why, I can't say I do, but I know how to speak to them, and know also what they say when they speak to me, and——"

" Then pray tell me, Mr. Johnson, what has not been interpreted ? " said Captain Hobson.

To which the modest Johnson replied, " No, Sir, I beg to be excused. The gentlemen of the Mission ought to be able to do it, and can do it very well ; only let Mr. Williams speak out loud so that we may hear—that is, those of us in the back part of the tent, and let all that the natives say be interpreted to the Governor. They say a great deal about land and Missionaries which Mr. Williams does not translate to you." [1]

[1] Colenso repudiates the suggestion that the speeches were not properly interpreted, and explains that Maori oratory is redundant with repetition which, of course, was very properly eliminated during the course of the translation.

This reflection both upon his capacity as a linguist and his integrity as a man rather nettled the Missionary, who, having obtained the permission of the Governor to vindicate himself, addressed the white people in English, and with his customary directness came at once to the point. He said there had been much talk about the Missionaries owning land and farming and such like; but the Commissioners who were about to sit would examine into the lands held by the Missionaries, and their titles thereto, as strictly as into any other. It was his special wish that this should be done, and he had so far given an earnest of his desire in that direction that he had already applied to His Excellency to have the Missionary lands made the first subject of investigation. "People," he said, "should recollect that were it not for the Missionaries they would not be here this day, nor be in possession of a foot of land in New Zealand. If any one person has a prior claim to land in this country that person must be the Missionary, who has laboured for so many years in this land when others were afraid to show their noses. I have a large family—a family of eleven children—more probably than any one present, and what are they to do when I am taken from them if they are not to have some land? Much has been said about my land, but I believe that when it is seen and known, and shared up between my children, no one will say that I have been over the mark, but on the contrary under. All I shall say at present is, I hope that all who hold land, obtained from the natives, will be able to show as good and honest titles to the same as the Missionaries can do to theirs."[1]

[1] The Bishop of Australia thus wrote to Mr. Williams on the subject of the Missionaries' land claims: "I am led to believe that the immediate consequence of establishing the British Dominion will be the settlement of titles to land according to the principles of law and equity. This proceeding will necessarily lead to a judicial investigation of the landed properties transmitted to the Society. These should be exactly and jealously re-examined, that you may be prepared to sustain them, even to the minutest point when brought under the scrutiny of the world at large, as beyond all doubt they will be. I think also that it will be expedient that you should take advantage of the warning thus given of what you are to expect, by preparing a most full and explicit account of all the transactions between you and any of the natives."

THE WAITANGI FALLS.

UNIV. OF
CALIFORNIA

Mr. Busby, who owned the whole of the Peninsula between the Waitangi and Kerikeri Rivers, felt that he, too, was being drawn into the vortex of the speculators by these accusations of native spoliation. He accordingly deemed it due to himself that something should be said in defence of his purchases, and so having obtained the permission of Captain Hobson he rose, and, speaking in English, said with some emphasis, " I deny that the term 'robbed' has been used by the chiefs Te Kemara and Rewa with reference to my purchase of land, as indicated by the white man who spoke, and coupled by him with Mr. Williams, by gestures, though not plainly by words. I never bought any land but what the natives pressed me to buy, for which I always paid them liberally. Allusion has been made to my possessing large tracts of land. I am happy to say I do hold some land; but I did not make any extensive purchases until I was out of office, and then, on my finding that, after having served the Government for fifteen years, not any provision was made, nor was likely to be made for myself and family, I purchased land. I only regret I had not done so at an earlier period, and that to a larger extent. In all my purchases, also, I have reconveyed to the natives both habitations and cultivations, by an inalienable gift, according to the number of persons thereon."

Mr. Busby having delivered his protest against what he considered to be the unwarranted aspersions of the white settler, whose name does not appear to have been recorded, Tamati Pukututu, a chief of the Te Uri-o-te-hawato tribe broke in upon the monotony of the opposition with a speech in favour of the treaty.

" This is mine to thee, O Governor! Sit, Governor, sit, a Governor for us—for me, for all, that our lands may remain with us; that these '*piritoka*' and '*piriawaawa*,' these homeless wanderers who sneak about, sticking to rocks, and to the side of the brooks and gullies may not have it all. Sit, Governor, sit for me, for us. Remain here a father for us. These chiefs say, 'Don't sit,' because they have sold all their possessions and they are filled with

foreign property, and they have also no more to sell. But I say, what of that? Sit, Governor, sit. You two stay here, you and Busby—you two, and they also, the Missionaries."

In his advocacy of the Governor's cause Tamati was seconded by Matiu, a chief of the Uri-o-ngongo tribe. "O Governor! sit, stay, remain, you as one with the Missionaries, a Governor for us. Do not go back, but sit here, a Governor, a father for us, that good may increase, may become large to us. This is my word to thee. Do thou sit here, a father for us."

"No, no, go back, go back," cried Kawiti, a turbulent Ngatihine. "What dost thou want here? We native men do not wish thee to stay. We do not want to be tied up and trodden down. We are free. Let the Missionaries remain, but as for thee, return to thine own country. I will not say 'Yes' to thy sitting here. What! to be fired at in our boats and canoes by night! What! to be fired at when quickly paddling our canoes by night! I, even I, Kawiti, must not paddle this way nor paddle that way because the Governor said 'No,' because of the Governor, his soldiers, and his guns. No, no, no, go back, go back, there is no place here for a Governor."

A chief of the Ngatiamake tribe named Wai, now rose and addressed some pertinent enquiries to His Excellency.

"To thee, O Governor! this. Will you remedy the selling, the exchanging, the cheating, the lying, the stealing of the whites? O Governor! yesterday I was cursed by a white man. Is that straight? The white man gives us natives a pound for a pig, but he gives a *Pakeha* four pounds for such a pig. Is that straight? The white man gives us a shilling for a basket of potatoes, but to a *Pakeha* he gives four shillings for a basket like that one of ours. Is that straight? No, no, they will not listen to thee, so go back, go back. If they would listen and obey, ah yes, good that, but have they ever listened to Busby? And will they listen to thee, a stranger, a man of yesterday? Sit indeed! what for? Wilt thou make dealing straight?"

At this point there was again some general dissatisfaction amongst the Europeans who apparently were only able to hear imperfectly. A hawker, a pedlar named Jones, from Kororareka, called out to His Excellency that the whites could not follow the interpreter. A young man on the opposite side of the tent confirmed his complaint, and the European who had previously objected to Mr. Williams's methods once more became prominent in support of his confrères. These dissatisfied individuals maintained a running comment across the tent for some moments, which resulted in the Governor again requisitioning the services of Mr. Johnson, who came forward and interpreted the speech of Wai, but not to the complete satisfaction of that dusky orator, who described the Johnsonian effort as " great lies."

This resulted in the restoration of Mr. Williams, whose next subject was Pumuka, a man of influence in the Roroa tribe who was favourable to the treaty : " Stay, remain, Governor ; remain for me " was his message. " Hear all of you. I will have this man a foster-father for me. Stay, sit, Governor. Listen to my words, O Governor ! Do not go away ; remain. Sit, Governor, sit. I wish to have two fathers—thou and Busby and the Missionaries."

" Yes, what else ? Stay, sit if not what ? Sit, if not how ? were the opening queries of Warerahi, a chief of Ngaitawake, who was popularly known as George King. " Is it not good to be at peace ? " he asked. " We will have this man as our Governor. What ! turn him away ! Say to this man of the Queen, ' Go back ? ' No, no." [1]

The next speaker was to be Hakiro, who wanted room to deliver himself as became a great chief, and whilst the reclining natives were being moved back to make a clear space in which he could run from one end of the platform to the other a chief from the Waikare, whose name has not been recorded, rose and complained of the unjust dealings of the white people, who had no sense of justice. For a

[1] This native had been actually christened at his own request as " King George," Mr. Williams having taken the responsibility of reversing the names, and entering them in that form in the Register.

very little thing—a shilling—they wanted a pig as big as himself. What he wanted to know was could the Governor make the *Pakeha* give a payment as large as the article he bought, but the speech was little noticed in the hustle caused by the clearing of a passage for Hakiro.

Hakiro belonged to the Ngatirehia tribes, being the son of Tareha, but on this occasion he essayed to speak for Titore,[1] though it is highly questionable whether he reflected the sentiments to which that chief would have given utterance had he been still with the living. Titore was justly regarded as one of the noblest of the Nga-puhi chieftains, and his early death was generally mourned, not only as a personal loss, but as a misfortune to the cause of national unity. Be that as it may, his illustrious representative on this auspicious occasion, swayed by other influences, elected to throw the weight of his great name into the opposite scale to which he would almost certainly have thrown it himself.

"To thee, O Governor! this. Who says sit? Who? Hear me, O Governor! I say, no, no."

As he shouted these questions and answers he ran swiftly backwards and forwards brandishing a *taiaha* as he ran.

"Sit indeed! Who says sit? Go back, go back. Do not thou sit here. What wilt thou sit here for? We are not thy people. We are free. We will not have a Governor. Return, return, leave us. The Missionaries and Busby are our fathers. We do not want thee, so go back, return, depart."

Tareha, who followed, was easily one of the largest natives in the North, and had been one of the most ferocious of cannibals.[2] He seldom burdened himself with much

[1] This was not the great Titore, who was the first to commence the felling of kauri spars for the Navy, but another chief of the same name. Titore Nui (the great) signed the Treaty under the name of Takiri.

[2] The Rev. R. Taylor relates an instance in which Tareha was about to despatch a slave for some real or imaginary offence. Mr. Kemp, one of the Missionaries interposed, and could not be persuaded to let the killing go on. Whereupon Tareha picked him up (for he was a small man) and carried him over to his cottage, deposited him inside, and told Mrs. Kemp to shut him up and keep him out of harm's way.

clothing, and on this occasion, as if to show how independent he was of such European luxuries, he appeared with nothing more than a dirty piece of old matting fastened round his waist. In the one hand he carried a canoe paddle, and in the other a small bunch of fern-root, tied by a piece of string, for the purpose of further demonstrating that he and his people still had the food of their fathers to rely upon. Tareha never became a Christian—dying as he lived, a heathen—but under the influence of Hongi he had always shown considerable solicitude for the Missionaries, whose interests he had invariably protected, both with his personal and tribal power. His particular protégé at this time was Bishop Pompallier, to whom, in common with Rewa, Moka, and Hakiro, he lived near at Kororareka. Whether this association in any way affected the views of Tareha and his associates is probably a matter best left to individual opinion, but it has been observed as an interesting coincidence that the natives who were in closest contact with the Bishop were the most aggressively hostile to the treaty.

This fact had already been so much in evidence that when Tareha rose, and in his deep sepulchral voice shouted, "No Governor for me—for us native men," no one who was taking a keen interest in the proceedings was very much surprised. With much of the gesticulation peculiar to Maori oratory and a clever application of the arts involved in native elocution, Tareha began to develop his pronouncement against the Governor. "We, we only are the chiefs—the rulers. We will not be ruled over. What! thou, a foreigner, up and I down! Thou high, and I, Tareha, the great chief of the Nga-Puhi tribes low! No, no, never, never. I am jealous of thee; I am, and shall be until thou and thy ship go away. Go back, go back, thou

---

He then returned to the business on hand. On another occasion the Missionaries discovered Tareha in a choking condition, a fish bone having lodged in his throat. He being *tapu* (sacred) none of his people dared touch him, but after considerable labour the Missionaries succeeded in dislodging the bone with the aid of a pair of scissors. After he had recovered, the punctilious Tareha claimed the scissors as payment for the desecration of his sacred throat.

shalt not stay here. No, no, I will never say 'Yes.' Stay! Alas! what for? Why? What is there here for thee? Our lands are already all gone. Yes, it is so, but our names remain. Never mind, what of that—the lands of our fathers alienated! Dost thou think we are poor, indigent, poverty-stricken—that we really need thy foreign garments, thy food? Look at this!"

Here he dangled his bunch of fern-root in the air as proof that his argument was not without foundation.

"See, this is my food, the food of my ancestors, the food of the native people. Pshaw! Governor, to think of tempting men—us natives—with baits of clothing and food! Yes, I say we are the chiefs. If all were to be alike, all equal in rank with thee; but thou the Governor up high—up, up, as this tall paddle[1] and I down, under, beneath! No, no, no. I will never say 'Yes, stay.' Go back, return, make haste away. Let me see you (all) go; thee and thy ship. Go, go, return, return."

The speech of Tareha with its forceful opinions and dramatic delivery had a marked and visible effect upon the native section of the audience, so much so that Captain Hobson began to regard the result with considerable trepidation. He expressed these fears to Mr. Williams, who, knowing the delicacy of the situation, advised him not to betray his anxiety, but at the close of the meeting to recommend the treaty to their deliberate consideration, and to say that he would give them three days in which to finally make up their minds upon it.

For this advice Captain Hobson thanked the Missionary, and then a more favourable turn was given to the debate by a humorous sally from Rawiri, a chief of Ngatitautahi, who, anxious to display his smattering of newly acquired English, opened his speech with the salutation, "Good morning, Mr. Governor, very good you." This was as far as his linguistic accomplishments could carry him, and for the remainder of his oration he relapsed into his native tongue, in which he made an earnest appeal for established

[1] Here he held up the canoe paddle, which he had used dramatically throughout his oration.

authority and a law that would maintain them in peace. "Our Governor, our Father! stay here, O Governor! Sit that we may be in peace. A good thing this for us, my friends, native men. Stay, sit. Do thou remain, O Governor! to be a Governor for us."

Up to this point the weight of influence and oratory had been heavily against the Governor, the opposition evidently considering it good tactics to get in early and reap the fruits of a first impression. But the friends of the treaty now put up a powerful foil to Tareha in the person of Hone Heke, the nephew and son-in-law of Hongi, and admittedly one of the most influential men, both by lineage and achievement, in all the North. Heke at this time was actively espousing the Christian cause, and had not developed the mischievous spirit which afterwards gave him even greater prominence in European annals than he had as yet acquired in Maori fame. He began in that mystical manner so much beloved by Maori orators, the skilful use of which was regarded as a test of their accomplishment.

"To raise up, or to bring down? To raise up, or to bring down? Which? Who knows? Sit, Governor, sit. If thou shouldst return, we natives are gone, utterly gone, nothinged, extinct. What then shall we do? Who are we? Remain, Governor, a father for us. If thou goest away, what then? We do not know."

Then turning and addressing himself to those immediately about him, he said, "This, my friends, is a good thing. It is even as the word of God.[1] Thou to go away! No, no, no! For then the French people or the rum-sellers will have us natives. Remain, remain, sit, sit here; you with the Missionaries all as one. But we natives are children. Yes, it is not for us, but for you, our fathers—you Missionaries—it is for you to say, to decide what it shall be. It is for you to choose, for we are only natives. Who and what are we? Children, yes, children solely.

[1] This was a reference to the New Testament, which had just been printed in the native language at the Missionary Press, at Paihia, and circulated amongst the tribes.

We do not know. Do you then choose for us. You our fathers—you Missionaries. Sit, I say, Governor, sit. A father, a Governor for us."

The emphasis with which these concluding sentences were pronounced, and the gestures by which they were accompanied, came as a convincing climax to what had been a mighty speech. The *mana* of Heke was great, for was he not descended from Rahiri, who came down in a direct line from a Viking Admiral of the Hawaiki fleet; was he not the representative of the Ariki family of Nga-Puhi; had he not by virtue of his great name levied toll upon all who crossed his estate at Puketona; was he not the brave who had distinguished himself at the 1830 fight at Kororareka when Hengi was killed, and had he not fought valiantly at Tauranga when Titore attacked the *pa* at Otumoetai? Heke had thus become great in all that told most in the estimation of the Maori, and when he had spoken it was indiscreet for any dog to bark.[1]

[1] Amongst the many contradictions which the historian of the Treaty of Waitangi has to reconcile, none is more difficult than the explanation of Hone Heke's attitude towards the negotiation. The report of his speech as printed above is taken from Colenso's account of the proceedings, and would lead one to suppose that Heke was in favour of the treaty. Colenso's view is supported by the Rev. Henry Williams, who tells us that Heke "fully approved" of the treaty and advised the people to sign it. Other accounts are quite different. The Rev. Mr. Burrows states that Heke "gave a lot of trouble" at the signing of the treaty. The Rev. Mr. Ironside reports that Heke "was violent in his harangue against Captain Hobson, vociferating repeatedly in his native style, '*Haere e hoki*' ('Go, return'). Tamati Waaka came to me and said his heart was *pouri* (grieved) with Heke's violence, and the way Captain Hobson was being treated. 'Well,' I said, 'if you think so, say so'; whereupon Tamati sprang up and made his speech." In some interesting annotations made on the treaty by Mr. William B. Baker, translator to the Native Department in 1869, that gentleman says: "I remember distinctly being present during the whole of the meeting; that Hone Heke Pokai was very violent in his language, though he is not mentioned by Captain Hobson. The chief whose name is given, Kaiteke, was a better-known character in those days than Heke, who, though a person of high rank and influence through his marriage with Hongi's favourite daughter, Rongo, had previously led a very quiet and retired life. A war of words ensued between Tamati Waaka Nēne, who came in at this crisis, and Heke, the result of which was that Waaka 'removed the temporary feeling that had been created.'" There is thus a distinct difference of opinion and impression between Mr. Colenso and the above writers who were also present and heard what was said.

No sooner had he resumed his seat upon the ground than the hum of approving comment could be heard in all quarters of the tent. Here was a speech indeed, Europeans and natives alike joining in eulogiums of both its manner and its matter. While the buzz of conversation filled the air, Hakitara, a chief of the Rarawa tribe, rose and commenced a speech in favour of the treaty. He was, however, unfortunate in having to follow Heke, who had for the moment captured public attention, and Hakitara, being unable to raise his voice above the din, soon subsided and made way for a greater even than Heke.

While the latter was speaking the gathering had received an important augmentation by the arrival of Tamati Waaka Nēne, his elder brother Patuone, and the Nga-Puhi chiefs of Hokianga. They had mingled with the crowd, and immediately the Rarawa chief had concluded, Nēne came forward and spoke " with a degree of natural eloquence that surprised all the Europeans and eventually turned aside the temporary feeling of hostility that had been created." [1]

Dr. Bright, one of the few Englishmen who have left us an account of this historic gathering, describes Nēne at this moment as a " mild-looking, middle-aged man with a deportment as if he felt he was a gentleman." As he listened to Heke he rested upon his *taiaha*, and smiled upon those about him. His face bore evidence that he was glad to see the white man and the brown in conference.

To this chief with his great mental powers, his keen perception, his capacity to read the signs of the times, it had been long apparent that the advent of the *Pakeha* was inevitable, and that the Maori system was incapable of developing the principles of a stable Government. To now enter upon a campaign of hostility to the whites would, he believed, certainly result in the destruction of his own race. It was too late. Yet to govern themselves was manifestly impossible. He therefore found himself in the same dilemma as had presented itself to a large

[1] *Vide* Captain Hobson's despatch to Sir George Gipps, February 5, 1840.

section of the ancient Jews in the beleaguered city of Jerusalem, who honestly enough believed that their country had arrived at that stage in its history when its only salvation lay in its seizure and government by a foreign power strong enough to establish justice and security, even though it might be at the sacrifice of liberty. What the Romans were to Palestine the British were in Nēne's eyes to New Zealand, and that was what he meant when he begged the Governor to remain and be to the Maori a friend, a father, and a Governor.

As he stepped into the arena of debate the storms were laid still, and a general calm suppressed the rising excitement, for he was esteemed by the white men and known to his own race as one who dared to fight as well as to talk of peace. His voice was low at first, nor needed he to raise it high—no sound intruded on it.

"I will first speak to us, to ourselves, the natives," said Nēne. "What do you say? The Governor to return? What then shall we do? Say here to me, O ye chiefs of the tribes of the northern part of New Zealand, how are we henceforward to act? Friends, whose potatoes do we eat? Whose were our blankets? These spears (holding up his *taiaha*) are laid aside. What has the Nga-Puhi now? The *Pakeha's* gun, his shot, his powder. Many months has he been in our *whares*; many of his children are our children. Is not the land already gone? Is it not covered, all covered with men, with strangers, foreigners—even as the grass and herbage—over whom we have no power? We the chiefs, and natives of this land, are down low; they are up high, exalted, yet they make no slaves. What do you say? The Governor to go back? I am sick, I am dead, killed by you. Had you spoken thus in the olden time, when the traders and grog-sellers came—had you turned them away, then you could well say to the Governor, 'Go back,' and it would have been correct, straight, and I would also have said with you, 'Go back'—yes, we together as one man, with one voice. But now as things are, no, no, no. What did we do before the *Pakeha* came? We fought,

UNIV. OF
CALIFORNIA

TAMATI WAAKA NĒNE.

After the painting by G. Lindauer in the Partridge Collection, Auckland, by kind permission of the owner.

UNIV. OF
CALIFORNIA

we fought continually. But now we can plant our grounds and the *Pakeha* will bring plenty of trade to our shores. Then let us keep him here. Let us all be friends together. I'll sign the *puka puka*.[1] I am walking beside the *Pakeha*."

This portion of the speech had been spoken with all the fiery declamation of which Waaka Nēne was capable when needs demanded it, but having delivered his message to his own people, he turned and, with pleading and pathos in his voice, said: "O Governor, sit. I, Tamati Waaka, say to thee, sit. Do not thou go away from us; remain for us a father, a judge, a peacemaker. You must not allow us to become slaves. You must preserve our customs, and never permit our land to be wrested from us. Yes, it is good, it is straight. Sit thou here, dwell in our midst. Remain, do not go away. Do not thou listen to what the chiefs of Nga-Puhi say. Stay, then, our friend, our father, our Governor." [2]

As it has always been frankly conceded that Nēne's speech was the turning-point in the debate, it may be well to present here a sketch of the chief whose stirring history and admirable characteristics were well and personally known to a writer who lived through all these eventful days in New Zealand. According to this authority, Nēne "had a singularly open, honest, and benevolent expression of face, and though, if needs were, he could be stern enough, there was little of cruelty or vindictiveness in his composition as there could possibly have been in one whose youth was spent in such surroundings. He was the bravest among the brave; a splendid Maori general, averse to fighting until every way of conciliation was exhausted; and although he never heard of Polonius, with him too it was a maxim, 'Beware of entrance to a quarrel, but, being in, bear't that the opposed may beware of thee.' He was impressed with the abiding feeling that the only chance for his race was to keep peace with the *Pakeha*, to accept loyally the supremacy of the Queen, and to bear

[1] The Treaty.

[2] "Nēne spoke in a strain of fervid and impassioned eloquence such as I never before heard, and which immediately turned the tide in our favour."—Felton Mathew.

themselves patiently through the slow and difficult transition from Maori custom to British law. His bare word was trusted all through the country as the most binding writing would be trusted amongst ourselves, and he had the power of attracting followers to his person with a devotion which made them ready to stand by him in life or in death.

"He had for many years been a convert of the Wesleyan Mission, and had received at his baptism the prefix Thomas Walker to his old Maori name of Nēne. From beginning to end he never swerved in his pledge of loyalty to the Queen. When he died he was buried in the little churchyard of Kororareka, having solemnly adjured his friends not to allow the Maori custom of disposing of his bones, but to let him lie in peace in a Christian grave; and over his grave the Government raised a stone monument, with an inscription in both languages expressive of their gratitude, and purporting that *that* was the resting-place of one who was alike steadfast in his friendship for the British and in his labours to secure the best interests of his countrymen—a chief of men, one wise in counsel as he was brave in war.

"For once in a way there was an epitaph of severe and simple truth, and there was not a word of flattery in its praise of the dead. He had been one of Hongi's lieutenants, and had traversed with his war parties the whole of the Northern Island to the neighbourhood of Cook Strait. But it was for his wisdom as a counsellor and his influence as a peacemaker that he was specially famous. No one could set down his conciliation to weakness or fear. In his ordinary bearing he was gentle as a child. In conversation his voice was soft as a woman's, but in the shout of battle it was said to be terrible, and it could be heard above all the clash of arms and the din of the conflict. He was hardly ever defeated, and it was his way before he fought to look beyond the victory, and to determine the move by which it should be followed. He was half a life older than Heke, and indeed he regarded the action of that chief very much as the escapade of a petulant

boy. In their case the struggle had none of the bitterness of personal resentment, and when Heke made his somewhat sulky submission, Nēne advised the Government to treat him with kindness and consideration, and the war being ended, not to add to his disappointment anything that would hurt his sense of personal dignity. We owe Nēne's memory, more than to any other of the Maori race, a real debt of gratitude and respect, for at many a crisis he threw himself into the breach, and averted dangers that might have been fatal in those early days. As a father he was a man of tender feeling. He had but one son, eighteen years old, whom my mother nursed in his illness, and after the boy's death, when Nēne came to our house, he could not speak of his loss without tears, or thank her too much for the kindness that seemed to him to have been all in vain."

Nēne was followed in the debate by his elder brother, Patuone, well known as one of the fathers of Nga-Puhi. Though he has not held the picturesque position in Maori history occupied by his younger relation, his life was at least eventful enough to have become the subject of an interesting biography,[1] as he was at this time as highly esteemed by his own people as he was by the *Pakeha* in later years; when in his old age he was living well down into the European era.

Patuone spoke briefly, but definitely. He favoured the coming of the Governor as the solution of all their troubles.

"What shall I say on this great occasion, in the presence of all these great chiefs of both countries? Here then this is my word to thee, O Governor! Sit, stay—thou and the Missionaries, and the word of God. Remain here with us, to be a father to us, that the French have us not, that Pikopo,[2] that bad man, have us not. Remain, Governor, sit, stay, our friend."

The turn which affairs had now taken proved too much

[1] *Life and Times of Patuone*, by C. O. Davis.

[2] This was a reference to Bishop Pompallier. The remark was no doubt prompted by religious prejudice, and serves to show to what extent the bitterness of sectarian feeling had already grown, for Patuone was otherwise a man of a most kindly nature.

for the excitable Te Kemara, who had been the first speaker. He had patiently heard out Heke, Nēne, and Patuone, but unable to longer restrain himself he at this point jumped up and in his lively, breezy manner proceeded to counter the flow of pro-British oratory: "No, no," he shouted. "Who says stay? Go away, return to thine own land. I want my lands returned to me. If thou wilt say, 'Return to that man, Te Kemara, his land,' then it will be good. Let us be all alike. Then, O Governor, remain. But the Governor up, Te Kemara down, low, flat! No, no, no. Besides, where art thou to stay, to dwell? There is no place left for thee."

This exclamation of Te Kemara's drew from Mr. Busby the remark that his house would be occupied by the Governor until a suitable residence could be procured for him, which piece of information served to produce a marked change in the chief's demeanour.

Crossing his hands as though they were locked in handcuffs, he ran up to the Governor, and with eyes flashing with anger, he exclaimed: "Shall I be thus? Say to me, Governor; speak. Like this—eh, like this? Come, come; speak, Governor, Like this—eh?"

Here his manner became distinctly offensive to His Excellency, and one of the chiefs sitting near-by reproached him for his insolence, whereupon he turned one of those violent mental somersaults which all extremists are at times apt to do. Leaping forward, he seized hold of Captain Hobson's hands and shook them heartily, grinning gleefully, while he shouted in the best English he could command, "How d'ye do—eh, Governor? How d'ye do—eh, Mister Governor?" This enquiry he repeated over and over again, the Governor evidently enjoying the joke as much as any one. "This," says Captain Hobson, "occasioned amongst the natives a general expression of applause, and a loud cheer from the Europeans in which the natives joined."

Thus the business of the meeting closed in the most amiable spirit, the further consideration of the momentous question being by general consent adjourned until the

following Friday (the 7th), in order that the natives might have one clear day during which to reflect upon the Governor's proposal.[1]

When Captain Hobson and his escort left the meeting they descended the rude pathway cut in the side of the hill, and as they walked towards the beach where their boat lay, the Governor was discussing with Mr. Colenso the printing of the treaty and other kindred matters. They had just reached the boat and were preparing to enter, when their attention was directed to a commotion not far off. They had not discovered the cause of the excitement before a chief, very much out of breath, burst in upon the viceregal party, and, standing directly before the Lieutenant-Governor, gazed intently at him for a few minutes. Then in a loud shrill voice he cried out in wailing tones, "*Au e he koroheke! E kore e roa kua mate,*" and at once fell back into the crowd.

The incident was so sudden in its happening, and was so evidently of personal moment to himself, that Captain Hobson was naturally curious to know its full import. He appealed to Mr. Colenso to kindly interpret the old man's message, but the Missionary, unwilling to enlighten the Governor as to the sinister suggestion conveyed by the grey-headed seer, endeavoured to evade the point by telling him what was perfectly true—that this was an old chief who had just arrived from the interior and was anxious to see the Queen's representative. The explanation, though plausible enough, did not satisfy the Governor, who had a predilection that there was more behind the chief's wild lament than this, and his importunities to know the truth being supported by those of Captain Nias, Mr. Colenso at length had to admit that there was more of prophecy than curiosity in the chief's mournful exclamation: "Alas! an old man. He will soon be dead."

The incident, which had something of comedy in its

[1] "One of the chiefs said, 'Give us time to consider this matter—we will talk it over amongst ourselves, we will ask questions, and then decide whether we will sign the treaty.' The speeches occupied about six hours, and the whole scene was one I would not have missed for worlds, and which I will never forget."—Felton Mathew.

early features, thus terminated with a tragic note, and the Governor, who had been highly elated at the success of the meeting, pulled off to his ship in a gloomy and meditative mood.

During the remainder of the day [1] a strong effort was made by the beach-combers and whisky-sellers of Kororareka to spread dissension amongst the chiefs, and to prejudice the idea of the Queen's protection; but the Missionaries were whole-hearted in their support, and vigilant to counteract the opposition of these ill-disposed individuals.[2] The good impression created by Heke and Nēne therefore stood, and before the evening had closed there was a preponderating number anxious to sign the treaty.

The Missionaries were equally anxious to take advantage of this favourable feeling, and were now keenly apprehensive that the delay until Friday would be detrimental to the treaty party. They therefore consulted together with a view to expediting the taking of the chiefs' signatures, and concluded that it would be better to do so on the morrow.

There was also another, and undeniably a powerful, factor operating in favour of a speedy termination of the business. This was the fact that the natives, having

[1] An attempt was made during the afternoon to distribute a quantity of tobacco amongst the natives, but in their impetuosity to secure the "fragrant weed" they upset the distributor, and an unseemly scramble ensued which resulted in a certain amount of bad feeling.

[2] "In the meantime Mr. J. R. Clendon, an Englishman acting as American Consul, the Missionaries, and many interested persons residing there, or about becoming settlers, were made to understand that their interests would be much promoted if they should forward the views of the British Government. Every exertion was now made by these parties to remove the scruples of the chiefs, and thus form a party strong enough to overreach the rest of the natives, and overcome their objections. About forty chiefs, principally minor ones—a very small representation of the proprietors of the soil—were induced to sign the treaty. The influence of Mr. Clendon arising from his position as the representative of the United States, was amongst the most efficient means by which the assent of even this small party was obtained. The natives placed much confidence in him, believing him to be disinterested. He became a witness to the document, and informed me, when speaking of the transaction, that it was entirely through his influence that the treaty was signed."—Extract from Commander Wilkes's *Journal*.

been called hurriedly together, were insufficiently supplied with food, nor were provisions for so large a number procurable within easy distance. The natives were thus faced with the alternative of remaining hungry at Waitangi or returning home to be fed. This was an option about which no Maori ever had two opinions, and it was perfectly obvious that if the proceedings were further delayed until Friday there would be a stampede from the scene of negotiations and the golden opportunity would be in all probability irretrievably lost.

Influenced by these considerations, the Missionaries agreed that Captain Hobson should be made aware of the altered position of affairs, but apparently no proper steps were taken to have the information conveyed to him. Consequently when they arrived next morning from their station at Paihia, about one and a half miles distant from Waitangi, the Governor had not yet come on shore. There was also a perceptible diminution in the number of the natives present, several companies, chagrined at their treatment in the scramble for the tobacco on the previous day, having folded their blankets and returned home. Still there were from 300 to 400 squatting in groups here and there, all earnestly discussing the treaty with more or less clarity of comprehension. An hour flew by and yet no sign of the Governor, nor could any movement be detected on board the *Herald* indicative of his coming.

Noon had arrived but still no Governor, impatience being manifest on every face, when a boat containing two officers was seen to leave the ship. They rowed leisurely across the Bay, and when they reached the landing-place and were told that both natives and Europeans were awaiting the Governor, they were considerably surprised, and explained that "His Excellency certainly knew nothing of a meeting to be held here this day."

Now that it was clear there had been an unfortunate misunderstanding it was not long before communication was held with the ship, and Captain Hobson, accompanied by the officers of his Government, came ashore; but his

departure had been so hurried that he came in civilian clothes, having no time to don more of his uniform than his cocked hat. He hurriedly assured those about him that he had not entertained the least notion that a meeting was to be held; that as matters stood he was quite prepared to take the signatures of all the chiefs willing to sign, but that he must still hold the public meeting on the following day as already announced by him.

A move was then made towards the tents by the whole party, closely followed by the natives, who crowded under the canvas with no small excitement and hustle. Some preliminary details—such as the arrangement of tables at which the chiefs could sign—having been completed, the Governor and party then ascended the platform, and Captain Hobson announced that this not being a regularly convened public meeting he could not permit of any discussion on the merits of the treaty. The business, therefore, would be confined to accepting the signatures of those chiefs who were willing and ready to sign.

At this juncture a message came to His Excellency from Bishop Pompallier, stating that he and his priest were at that moment resting in Mr. Busby's house, and were anxious to be present at the meeting. Lieutenant Shortland was immediately despatched to bring the Bishop in, and on his entering he was welcomed and invited to occupy the seat he had filled on the previous day.

The business was resumed by Captain Hobson proposing that Mr. Henry Williams should read the treaty from the parchment on which it had been engrossed, as that which had been submitted to them on the preceding day had been merely the original draft. This office was performed by Mr. Williams, whereupon Bishop Pompallier leaned over to the Governor and asked that the natives might be informed that all who should join the Catholic Church should have the protection of the British Government.

Captain Hobson, with much blandness of gesture and expression,[1] replied, "Most certainly," and proceeded to

[1] In some *Early Recollections* Archdeacon Williams attributes this

express his regret that the Bishop had not made known his wishes earlier, as in that event the provision " would have been embodied in the treaty."

Turning then to Mr. Williams, he said: " The Bishop wishes it to be publicly stated to the natives that his religion will not be interfered with, and that free toleration will be allowed in matters of faith. I should therefore thank you to say to them that the Bishop will be protected and supported in his religion—that I shall protect all creeds alike."

" I presume the same protection will be offered to all? " remarked Mr. Williams; to which the Governor replied, " Certainly."

" What need, then," asked Mr. Williams, " is there to burden the proceedings with such an announcement if all are to have protection alike? "

To this the Governor replied that as the Bishop was anxious that the announcement should be made, he would feel obliged if Mr. Williams would deliver it to the meeting.

Mr. Williams then proceeded to address the natives: " *Na, e mea ana te Kawana* "—" Attend, the Governor says." Here, however, he felt the matter was one of such magnitude that he could not afford to treat it in a casual way, and he expressed this opinion to his fellow Missionary, Mr. Clarke, who was standing near him.

" Pray, sir, write it down first, as it is an important sentence," suggested Mr. Colenso.

Mr. Williams, taking pencil and paper, then wrote as follows: " The Governor wishes you to understand that all the Maoris who shall join the Church of England, who shall join the Wesleyans, who shall join the Pikopo, or Church of Rome, and those who retain their Maori practices shall have the protection of the British Government."

This he handed to the Governor, who passed it on to the Bishop, who, having read it, said in English, " Oh yes, that will do very well."

The statement was read to the meeting, and if Mr.

---

affability to the fact that at this time Captain Hobson was " under the delusion " that the Catholics carried the sway with the natives.

Williams is to be accepted as an authority, it was received in silence, the natives not knowing what it meant.[1] Bishop Pompallier then rose and, bowing to the Governor, left the meeting.

These preliminaries having been satisfactorily disposed of, the chiefs were as a body invited to come forward and append their signatures to the treaty. To this invitation no one responded for a time, none caring to be the first to take what might prove to be a precipitate step. For several minutes the Maori mind hung in this state of doubt and indecision until Mr. Busby hit upon the expedient of calling upon the chiefs by name. He had prepared a list for his own information of those eligible to sign, and by a fortunate circumstance the name of Hone Heke stood first upon that list. Heke, who had proved himself such a redoubtable advocate of the treaty, came forward frankly enough when thus directly appealed to, and was about to sign, when Mr. Colenso interposed by asking the permission of the Governor to clear up one point upon which grave doubts had been raised in his mind as the result of his mingling with the natives since the earlier meeting. This permission was readily granted, whereupon Mr. Colenso said, "May I ask Your Excellency whether it is your opinion that these natives understand the articles of the treaty which they are now called upon to sign ? "

He was proceeding to say that he had that morning arrived at a different conclusion, when Captain Hobson interrupted him with the remark : " If the native chiefs do not know the contents of this treaty it is no fault of mine. I wish them to fully understand it. I have done all that I could to make them understand the same, and I really don't know how I shall be enabled to get them to do so. They have heard the treaty read by Mr. Williams."

" True, Your Excellency," rejoined Mr. Colenso, " but the natives are quite children in their ideas. It is no easy matter to get them to understand—fully to comprehend

[1] The Bishop rather plumes himself that by his intervention he secured the inestimable boon of religious freedom to the people of New Zealand—*vide* his *History of the Catholic Church in Oceana*; but he is obviously labouring a point about which there was no dispute.

a document of this kind; still I think they ought to know somewhat of it to constitute its legality. I speak under correction, Your Excellency. I have spoken to some of the chiefs concerning it, who had no idea whatever as to the purport of the treaty."

Here Mr. Busby joined in the discussion by reminding Mr. Colenso that the best answer that could be given to his observation would be found in the speech made yesterday by the very chief about to sign, Hone Heke, who said "the native mind could not comprehend these things; they must trust to the advice of their Missionaries."

"Yes, that is the very thing to which I was going to allude," replied Mr. Colenso. "The Missionaries should do so, but at the same time the Missionaries should explain the thing in all its bearings to the natives, so that it should be their very own act and deed. Then in case of a reaction taking place, the natives could not turn round on the Missionary and say, "You advised me to sign that paper, but never told me what were the contents thereof."[1]

Captain Hobson, who had evidently not contemplated this contingency, expressed the hope that no such reaction would take place. "I think," he said, "that the people under your care will be peaceable enough: I am sure you will endeavour to make them so. And as to those that are without, why, we must endeavour to do our best with them."

This attitude on the part of the Governor sufficed to satisfy Mr. Colenso, who had no desire to be contumacious, but having conscientious doubts upon the native grasp of a subject necessarily foreign to their tribal policy, he felt it his duty to give full expression to those doubts, and he thanked His Excellency for having given him the opportunity to do so.

Hone Heke then put his name upon the parchment,[2]

[1] Archdeacon Williams is responsible for the statement that none of the natives held back from signing the treaty because they did not understand it, but many did because of extraneous influences brought to bear upon them.

[2] Hone Heke signed the treaty under his ancestral name, Pokai. All the writers are agreed that he was the first, or amongst the first to

and as if to answer the objection raised by Mr. Colenso, he told the people in a brief speech that he fully approved of the proceeding, as they all needed protection from every foreign power, and they well knew the fostering care of the Queen of England towards them.

With so propitious a lead there was no further hesitancy on the part of the remaining chiefs, and the process of recording their signatures went merrily on. While it was proceeding, Marupo, a chief of the Whanaurara tribe, and Ruhe, a chief of the Ngatihineira tribe, were busy making violent speeches against the treaty. Both warriors delivered themselves in the style characteristic of their people when they have serious business on hand, running sharply up and down a beaten avenue, gesticulating energetically, stamping their feet, and pouring out their denunciations with a volubility that was difficult to follow. Marupo, who had discarded all his clothing except a *piupiu* made of reeds which hung round his waist, was especially determined in his opposition, continuing his harangue until voice and body failed from sheer physical exhaustion.

Then realising that his oratory had not turned the tide of public opinion, and that the adoption of the treaty was inevitable, he and his compatriots, appreciating the advantage of being on the popular side, joined the ranks of the signatories and drew their *moko*[1] upon the parchment.

Marupo signalised his conversion by shaking hands heartily—even violently—with the Governor, and desired to confirm the new-formed friendship by seizing the Governor's hat, which was lying on the table, and putting it upon his head.

The next of the insurgents to surrender was the versatile but volatile Te Kemara, who, when he had succumbed to the pressure of the popular will, volunteered the statement that he had been influenced in his opposition by the French

sign; but on the treaty itself his name appears as sixty-sixth in order, the place of honour being given to Kawiti, his confederate in the war of 1845. This may be accounted for by the fact that he wrote his name on the part of the sheet that came most convenient to him.

[1] The tattoo marks on their face.

Bishop, who had told him " not to write on the paper, for if he did he would be made a slave."

The only chief of high standing who was present and had not now signed the treaty was Rewa, but his obduracy was at length overcome, he yielding to the persuasions of his tribal friends, supported by the advice of the Church Missionaries, and when at length he drew his curious hieroglyphics upon the parchment, he too admitted that his opposition had been wholly inspired by the Bishop, who had earnestly interceded with him not to become a party to the treaty.

Captain Hobson, who had apparently recovered from his recent indisposition, appeared to be in the cheeriest of spirits, and as each chief signed the treaty he took him by the hand, and repeating in Maori " *He iwi tahi tatou* "—" We are now one people "—paid a little compliment to the native race that was hugely appreciated by the recipients.[1]

During the course of the morning small contingents of natives had been arriving from distant parts, who had not been present at the previous day's proceedings owing to the unavoidable delay in receiving their summoning circulars, but after brief explanations by their friends, they, without exception, subscribed to the Queen's proposal to give their country a stable Government. Altogether forty-five chiefs signed the treaty on this eventful February 6, but they were for the most part men of only moderate influence, and with the exception of Waaka Nēne, and his brother Eruera Patuone, who hailed from Hokianga, and Kauwhata, Wharau, and Ngere, from Wangaruru, all were resident within the immediate vicinity of the Bay of Islands. Twenty-six of these, however, had signed the much-despised Declaration of Independence five years before, and Captain Hobson so far concluded that their acquiescence in his present mission " must be deemed a full and clear recognition of the

[1] At the close of the second day's ceremony Patuone advanced to the dias and presented Captain Hobson with a handsome greenstone *mere* as a gift to the Queen. He afterwards returned on board the *Herald* and had dinner with the Governor.

sovereign rights of Her Majesty over the northern parts of this Island," that he immediately arranged with Captain Nias to announce the cession on the morrow with a salute of twenty-one guns from the deck of the *Herald*.[1]

Having now concluded the official portion of the business, Captain Hobson, who had conducted the whole of the proceedings with conspicuous patience and ability, left the meeting under a volley of cheers from the natives, which resounded through the hills and across the sunny waters of the Bay.

" In the course of these proceedings," wrote Captain Hobson to Sir George Gipps, " I have courted the utmost publicity, and I have forborne to adopt even the customary measure of propitiating the consent of the chiefs by promises of presents, and not until the treaty was signed did I give them anything. To have sent them home without some acknowledgment would have been a violation of their customs, and would have given offence. I therefore distributed a few articles of trifling value before they separated."

This distribution was entrusted to Mr. Colenso, each chief who had signed the treaty receiving two blankets and a quantity of tobacco, and " by dint of close and constant attention," reports that gentleman, " the said distribution went off well without any mishap or hitch."

Next morning broke with a grey sky and rain so incessant as to dissipate all hope of holding the contemplated meeting. Neither was it deemed advisable under such depressing circumstances to proclaim the event by a Royal salute, so that by a strange perversion of fate, Friday the 7th, which was to have been the day of days, passed off cold, bleak, and uneventful. It was not, therefore, until Saturday the 8th that the proceedings, so far as they had gone, were fully consummated. This was accomplished amidst the floating of bunting and the booming of guns, for upon this bright and sunny day it

[1] The *Herald* lay off the Hermione reef, where her guns could command the lawn in front of Mr. Busby's house, as well as the flat to the left on which the Maoris were camped.

may be said that New Zealand became a British colony, and what some of us are vain enough to regard as the brightest jewel in Britain's Crown.[1]

[1] The following interesting reminiscences regarding the Treaty of Waitangi are from the pen of Mr. George Elliott-Elliott, who in the year 1841 was Record clerk in the Government service: "This celebrated document, a sort of New Zealand Magna Charta in its importance, is not a single document, but is composed of a number of separate sheets; and, if I remember rightly, some few are of parchment and some of paper—the text is the same in all; these separate sheets were sent to the different tribes and *hapus* of natives for the signatures of the different chiefs and influential men amongst them. Some of them could write, and signed their names; others affixed their marks, in the shape of what was supposed to be an imitation of the tattoo on their faces. Each of these sheets was in charge of some well-known European, generally some one in connection with the Church of England or Wesleyan Missions, who attested the signatures and remarks of the various persons on the document, and, on completion, returned it to the Government.

"There is no doubt that this treaty has a *mana* peculiar to itself, and that the natives regard it with respect. They believe that they have thereby voluntarily given up to the *Paksha* a something which is their loss and the *Paksha's* gain; but what that something is they are quite unable to define. I feel pretty sure that if, from any accident in the early days, this document had been lost or destroyed, the natives would never have been induced to sign another. That it was once saved from such accident the following will show: In 1841 the Government offices were held in a four-roomed wood cottage in Official Bay, Auckland. The Colonial Secretary, the Audit, the Colonial Treasurer, and the Customs each had one room. Mr. Shortland was Colonial Secretary (the Audit was also under his control), Mr. Cooper was Colonial Treasurer and Collector of Customs. There were four clerks in the establishment—Grimstone in the Treasury, Leech in the Audit, Freeman and myself in the Colonial Secretary's. We were the Government in those prehistoric days. I was called Clerk of Records, and had charge of the various records and papers—not many then—amongst them this Treaty of Waitangi. This, with the seal of the colony, I kept in a small iron box brought from Sydney in the *Westminster* the year before. I was living in a *raupo* whare in Queen Street, close to Shortland Street, at that time ('41), when early one morning—I can't remember the precise date—I observed a great body of smoke ascending from Official Bay. I at once ran up Shortland Street, and on reaching the top of the hill found that the Government offices were on fire. When I got to the building one end was in flames and the place full of smoke. I saw that nothing could save the place. I at once tied my handkerchief over my face, got the door open, and rushed into the room which the Colonial Secretary occupied. I could not see for the smoke, and the handkerchief both blinded and choked me. The room was small, and I knew it so well I could put my hand on anything in it blindfold. I at once went to the iron box, unlocked it, took out the Treaty of Waitangi, and the seal of the colony, and ran out again directly. I suppose from the time I entered the building until I left it was not more than a minute, but it seemed an hour. I carried the seal and

the treaty to the house of Mr. Felton Mathew (Surveyor-General), which was close by, and gave them into his charge. When I got outside the burning offices several persons had come up, amongst them some seamen from a French man-o'-war, then in harbour. They had a portable fire-engine, but it was useless, for there was no water. Of course the building and its contents were all destroyed, amongst them the iron box from which I had taken the seal and the treaty. The box was made of common sheet iron.

"I subsequently fastened the different sheets of the treaty together and deposited it in the Colonial Secretary's office, where I presume it has been ever since."

To commemorate the signing of the treaty, Mrs. Busby planted the Pohutukawa tree still growing in front of the old Residency (see illustration).

The Maoris have also erected a monument on the opposite side of the river, beside what is known as the Treaty House, where they at one time hoped to establish a Parliament of their own. The monument was unveiled by the Hon. William Rolleston, Native Minister, on March 23, 1881.

The original documents comprising the Treaty of Waitangi are now in charge of the Department of Internal Affairs.

CHAPTER V

IN SEARCH OF SIGNATURES

ALTHOUGH Captain Hobson had every reason to be gratified with the result of his mission at Waitangi, it was perfectly obvious that the signatures obtained there were only sufficient to give him jurisdiction over a very circumscribed area of country. It was equally evident that if the full intentions of the British Government were to be given effect to, it would be necessary to put into practice the Mahomedan principle and go to the mountain, since the mountain had failed to come to him. He accordingly arranged a campaign by which the districts north of the Bay of Islands would be visited, either by himself personally, or by his duly accredited officers. Pursuant to this arrangement on the morning of the 10th, the Lieutenant-Governor (accompanied by Captain Nias) and his suite left the Bay of Islands and rode over to the Mission station at Waimate, where on the 12th they held a meeting and obtained the signatures of all the chiefs present. With two of the Church Missionaries, Messrs. Taylor and Clarke, added to his company, Captain Hobson left Waimate next day and continued his journey to Hokianga, where it was anticipated a great meeting would be held. On arriving at Waihou, a settlement on the banks of the river about seven miles above the Wesleyan Mission station,—for he was now within the Wesleyan sphere of influence,—the Governor was met by the members of the Mission and all the principal European settlers in the neighbourhood. Here he received, probably in the form

of an address, the warmest assurances of the settlers' fidelity to the Queen, and the most hearty congratulations to himself upon his selection as her representative.

From this point the journey was continued by boats supplied by the settlers, and the progress down the river was marked by frequent evidences of cordiality and even enthusiasm. On passing the settlement at Hauraki a salute of thirteen guns was fired from a miniature fort of European construction, and on arrival at the Mission station the Governor was again the recipient of congratulations from the settlers and the Missionaries.

In response to these graceful felicitations Captain Hobson delivered a brief address, in which he expressed the high sense he entertained of this earnest of their loyal zeal in forwarding the views of Her Majesty's Government, and of the honour they had conferred upon him personally by their flattering attention. At the same time Captain Hobson took occasion to announce that in accordance with notices already published, he proposed to hold a meeting of the chiefs there next day, to which a cordial invitation was extended to the European population of every class and nation.

The novelty of the occasion was not without its influence upon the natives, and upon a careful estimate it is computed that there were not less than 3000 at the station next morning, of whom between 400 and 500 were chiefs of varying rank and importance. Thus everything promised well. But at the hour appointed for the assembly it was observed that there was a great disinclination on the part of the chiefs to associate themselves with the movement. Some were reticent, others morose, more were openly hostile, and that to such an extent it was manifest they were not approaching the subject with unprejudiced minds, and it required no keen observer to detect that an unfavourable spirit prevailed amongst them. By the exercise of a little judicious manœuvring, however, they were at length induced to admit that there could be nothing derogatory in at least hearing what message the Governor had to deliver, and after some delay they were

induced to form into procession and march to the place of meeting.

The business of the day commenced in much the same manner as it had done at Waitangi and Waimate, the Rev. Mr. Hobbs, of the Wesleyan Mission, acting as interpreter. After a short address to the Europeans, Captain Hobson entered into a full explanation to the chiefs of the views and motives of Her Majesty in proposing to extend to New Zealand her powerful protection. He then, as on previous occasions, read the treaty, expounded its provisions, offered to elucidate all doubtful points, and invited the freest discussion. "This undisguised manner of proceeding," wrote Captain Hobson to Sir George Gipps, "defeated much of the opposition, but did not, to the extent of my wish or expectation, remove the predetermination to oppose me that had already been manifested. The New Zealanders are passionately fond of declamation, and they possess considerable ingenuity in exciting the passions of the people. On this occasion all the best orators were against me,[1] and every argument they could devise was used to defeat my object."

The debate was opened by Aperahama Taonui, who rose and said: "We are glad to see the Governor. Let him come to be a Governor to the *Pakehas*. As for us we want no Governor; we will be our own Governor. How do the *Pakehas* behave to the black fellows at Port Jackson? They treat them like dogs! See a *Pakeha* kills a pig; the black fellow comes to the door and eats the refuse."

"What is the Governor come for?" exclaimed Papahia. "He, indeed! He to be high, very high, like Maungataniwha (a high hill near Hokianga) and we low on the ground; nothing but little hills. No, no, no! Let us be equal; why should one hill be high and another low? This is bad."

[1] Although the Hokianga chiefs as a body were the most determined in their opposition to the treaty, it is worthy of note that they were afterwards the most faithful in their adherence to the Government, and fought gallantly under Waaka Nēne, Aperahama Taonui, and Mohi Tawhai against Heke and Kawiti, during the Northern war of 1845.

MOSES (Mohi Tawhai)—"How do you do, Mr. Governor? All we think is that you come to deceive us. The *Pakehas* tell us so, and we believe what they say; what else?"

TAONUI—"We are not good (or willing) to give up our land. It is from the earth we obtain all things. The land is our Father; the land is our chieftainship; we will not give it up."

"No, no," cried Kaitoke; "no, Mr. Governor, you will not square out our land and sell it. See there, you came to our country, looked at us, stopped, came up the river, and what did we do? We gave you potatoes, you gave us a fish-hook; that is all. We gave you land, you gave us a pipe, that is all. We have been cheated, the *Pakehas* are thieves. They tear a blanket, make two pieces of it, and sell it for two blankets. They buy a pig for one pound in gold, and sell it for three. They get a basket of potatoes for sixpence, sell it for two shillings. This is all they do; steal from us, this is all."

Here the voluble Taonui again broke in upon the proceedings with some observations which were so clearly not of native origin as to convince Captain Hobson that he had not only the natural Maori ignorance and suspicion to contend with, but powerful counter-influences originating with the Europeans.

"Ha, ha, ha, this is the way you do," cried Taonui. "First your Queen sends Missionaries to New Zealand to put things in order, gives them £200 a year. Then she sends Mr. Busby to put up a flag, and gives him £500 a year, and £200 to give to us natives. Now she sends a Governor."[1]

"Speak your own sentiments, not what bad men have told you," retorted Captain Hobson.

"I do," replied Taonui. "I have not been to Port Jackson, but I know Governors have salaries."

The Governor again felt compelled to interpose, and

[1] These speeches are reported from notes made at the time by Lieutenant Shortland. In Captain Hobson's despatch he makes it appear that it was Papa Haiga (Papahia) who made this statement, but from Mr. Shortland's notes it would appear to have been Taonui.

accused the speaker of being prompted by designing Europeans.

This fact Taonui frankly admitted, and, turning to the assembly, called for his *Pakeha* adviser to come forward and sustain his allegations. "This call was reiterated by me," says Captain Hobson, "when a person named Manning[1] presented himself. I asked him his motive for endeavouring to defeat the benevolent object of Her Majesty, whose desire it is to secure to these people their just rights, and to the European settlers peace and civil Government."

Manning's reply was that he conscientiously believed that the natives would be degraded under British rule and influence, and that therefore he had advised them to resist the persuasions of the Governor and the Missionaries in favour of the treaty, admitting at the same time that the laws of England were requisite to restrain and protect British subjects, but to British subjects alone should they be applicable.

"But are you not aware that English laws can only be exercised on English soil?" asked Captain Hobson.

"I am not aware," replied Manning, "I am not a lawyer."

"Then that will do. Resume your seat," commanded Hobson.

The Lieutenant-Governor then proceeded to tell the chiefs that their *Pakeha* friend had given them advice in utter ignorance of the most important principle that British laws could not be enforced on a foreign soil, and that their only hope of protection against unscrupulous Europeans was to become a party to the treaty.

"If you listen to such counsel," he continued, "and oppose me, you will be stripped of all your lands by a worthless class of British subject, who will consult no interest but their own, and who care not how much they will trample upon your rights. I am sent here to control such people, and to ask from you the authority to do so."

[1] Afterwards Judge Manning of the Native Land Court, and author of that classic *Old New Zealand*.

This spirited little speech was responded to by what Captain Hobson has called "a song of applause." Several chiefs who had been silently sympathetic with the Governor now sprang up actively in his support, and by their championship changed the whole spirit of the debate.

"Welcome, welcome, welcome, Governor!" cried Ngaro. "Here are the Missionaries; they come to the land, they bought and paid for it, else I would not have them. Come, Come! I will have the Governor. No one else perhaps will say 'Yes,' but I, Ngaro, I will have him. That is all I say."

MOSES (Mohi Tawhai)—"Where does the Governor get his authority? Is it from the Queen? Let him come; what power has he? Well, let him come, let him stop all the lands from falling into the hands of the *Pakehas*. Hear, all ye *Pakehas*! Perhaps you are rum-drinkers, perhaps not; hear what is said by us. I want all to hear. It is quite right for us to say what we think; it is right for us to speak. Let the tongue of every one be free to speak; but what of it? What will be the end? Our sayings will sink to the bottom like a stone, but your sayings will float light, like the wood of the Whau-tree, and always remain to be seen. Am I telling lies?"

Kaitoke, who had previously delivered a hostile speech, again openly maintained his opposition by interjecting, "Let us choose our own Governor."

These sentences, democratic though they were to the last degree, found no sympathy with Rangatira Moetara, who followed with a brief speech.

"Welcome, Mr. Governor! How do you do? Who sold our land to the *Pakehas*? It was we ourselves by our own free will; we let it go, and it is gone, and what now? What good is there in throwing away our words? Let the Governor sit for us."

MOSES (Mohi Tawhai)—"Suppose the land has been stolen from us, will the Governor enquire about it? Perhaps he will, perhaps he will not. If they have acquired the land by fair purchase, let them have it."

Taonui, upon whom the refutation of Manning by the

Governor had evidently had a marked effect, again rose and said:

"Lo, now for the first time my heart has come near to your thoughts. I approach you with my whole heart. You must watch over my children; let them sit under your protection. There is my land too; you must take care of it, but I do not wish to sell it. What of the land that is sold? Can my children sit down on it? Can they—eh?"

Here the chiefs Waaka Nēne, his brother Patuone, Rangatira, and Taonui stepped forward and chanted a song of welcome to the Governor, after which Nēne made the following speech:

"Listen to me, Governor; all of you listen to me. This is my speech. If the Baron de Thierry wishes to claim my land, why is he not here to-day? No, no; it was never sold to him. Does he think he will have it? No, no; he shall not have any of it. This is all I have to say."

A chief, Hone Kingi Raumati, whose baptismal name was John King, next delivered a sympathetic address: "My speech is to the Governor. This is what I have to say. It was my father, it was Muriwai, told me to behave well to the *Pakehas*. Listen, this is mine; you came, you found us poor and destitute. We on this side say, 'Stay and sit here.' We say, 'Welcome, welcome'; let those on the other side say what they like. This is ours to you. Stay in peace. Great has been your trade with our land. What else do you come for but to trade? Here am I. I who brought you on my shoulders.[1] I say come; you must direct us, and keep us in order; that is all mine to you. If any one steal anything now there will be payment for it. I have done my speech."

A chief whose name does not seem to have been preserved by the chronicler of the meeting, but who had support for the Governor in his words, said: "How do you do? Here am I, a poor man; and what is this

[1] Meaning one who has been favourable to the introduction of Europeans.

place? A poor place, but this is why you have come to speak to us to-day. Let the *Pakehas* come and I have not anything to say against it. There is my place, it is good land; come and make it your sitting-place—you must stay with me. That is all."

The last speech was that of Daniel Kahika: "What indeed!" he said in indignant tones. "Do you think I will consent to other people selling my land? No, truly. If my land is to be sold I will sell it myself. But no, I will not sell my land. I do not like the *Pakehas* to tease me to sell my land. It is bad. I am quite sick with it. This is my speech."

So closed the debate at Hokianga. Apologies were freely offered by the opposing chiefs, the most prominent of whom at once came forward and signed the treaty.

"When the example had once been shown," wrote Captain Hobson, "it was with difficulty I could restrain those who were disentitled by their rank from inserting their names. Upwards of fifty-six signatures were given,[1] and at twelve o'clock at night the business closed. Before the last of the party were dismissed it was intimated to me that the chiefs were desirous I should attend their feast on the following morning, and in order to gratify them I relinquished a visit I had arranged to the lower part of the river. At ten o'clock on the 13th I went by appointment to the Hauraki, and there 1000 as fine warriors as were ever seen were collected in their best costume. The native war-dance, accompanied by those terrific yells which are so well qualified to exhibit the natural ferocity of the New Zealand character, was exhibited for my amusement, the guns from a small European battery were fired, and the natives discharged their muskets and dispersed under three hearty cheers for my party. The feast which I had ordered to be prepared, consisting of pigs, potatoes, rice, and sugar, with a small portion of tobacco to every man, was partaken of by all in perfect harmony. It was estimated that of men, women, and children there were 3000 persons present. The influence against me was entirely traceable to the foreign Bishop of the Roman Catholic persuasion, and to a set of escaped convicts and other low ruffians who have congregated on the river in considerable numbers. These parties, though actuated by different motives, were united in their proceedings, and many of the latter were agents of the former. Mr. Manning, whom I have before mentioned, though not of a degraded class, is an

[1] Altogether 120 signatures were obtained in the Hokianga district.

adventurer, who lives with a native woman, has purchased a considerable portion of land, and being an Irish Catholic is the active agent of the Bishop. Another person, altogether of a lower description, known under the name of 'Jackey Marmon,' who is married to a native woman, and has resided in this country since 1809, is also an agent of the Bishop. He assumes the native character in its worst form—is a cannibal—and has been conspicuous in the native wars and outrages for years past. Against such people I shall have to contend in every quarter, but I do not despair of arranging matters hereafter with comparative ease. The two points at which I have already met the natives were the strongholds of our most violent opponents, and notwithstanding the untiring efforts of the Bishop Pompallier and the convicts, I have obtained the almost unanimous assent of the chiefs. Of the whole of the Hokianga but two head chiefs refused their consent, and even from their tribes many chiefs have added their names to the treaty. On the morning of the 14th, when preparing to return here, I regret to say that, notwithstanding the universal good feeling which subsisted among the chiefs on the previous day, two tribes of the Roman Catholic Communion requested that their names might be withdrawn from the treaty. It is obvious that the same mischievous influence I before complained of had been exercised in this instance. I did not of course suffer the alteration, but I regret that the credulity of the chiefs should render them so susceptible of unfavourable impressions. I considered that on the conclusion of the treaty at Waitangi the sovereignty of Her Majesty over the whole of the northern district was complete. I can now only add that the adherence of the Hokianga chiefs renders the question beyond dispute. I therefore propose to issue a Proclamation announcing that Her Majesty's dominions in New Zealand extend from the North Cape to the 36th degree of longitude. As I proceed southward and obtain the consent of the chiefs I shall extend these limits by Proclamation until I can include the whole of the Island."

On the day that Captain Hobson had first met the Rev. Henry Williams on board the *Herald* one of the many subjects they had discussed was the purchasing of a site for the colonial Capital. In this respect the Missionary's geographical knowledge of the north was invaluable, and when asked for his opinion he immediately pronounced solidly against the Bay of Islands where the land was too confined for a potential city. He was, however, enthusiastic about the isthmus at the Waitemata, as being unoccupied by natives, and possessing topographical

advantages far in excess of any other known site. It was, therefore, for the dual purpose of inspecting this promising locality, and of meeting the natives at Waitemata, that the Governor and Mr. Williams left the Bay of Islands on February 21 in the *Herald*. A considerable number of signatures were obtained at various points along the coast of the Hauraki Gulf, and on reaching the mouth of the Waitemata River in the Firth of Thames,[1] Mr. Williams was despatched to Maraetai to communicate with and collect the natives in that district. As he was returning to the ship four days later he met Captain Nias coming to meet him in his boat. The Captain conveyed to him the disquieting intelligence that on the previous Sunday (March 1) Captain Hobson had been attacked by a violent illness—due to the harassing nature of his duties and to long exposure to wet, resulting in a paralytic seizure[2]—so severe as to disable him, and to cause him to seriously contemplate his resignation and return to Sydney.

When the Missionary saw the invalid in his cabin he took a more optimistic view of the situation, and strongly urged Captain Hobson not to determine so hurriedly to relinquish his office as Governor. He further offered to find him comfortable quarters at the Mission station where he could rest and have every care it was possible to provide under the circumstances. These persuasions induced the Governor to fall in with the Missionary's views; the *Herald* returned to the Bay of Islands, and the patient was conveyed to the house of Mr. Richard Davis at

[1] Captain Nias conducted the meeting at the Waitemata, and secured eight or ten signatures.

[2] It is more than likely that at this date Captain Nias did not know the real nature of Captain Hobson's illness. Some correspondence which took place later in the month seems to suggest that there was a little friction between Dr. Lane, the ship's surgeon, and himself on the subject. On the arrival of the *Herald* in Sydney, towards the end of March, Dr. Lane was sent for by Sir George Gipps, who requested that he be furnished with a written report on the state of Captain Hobson's health. Dr. Lane replied, ascribing the illness to an attack of paralysis hemiplegica. In forwarding this report to the Governor, Captain Nias stated that "it is in total contradiction of everything he has stated before to me on the subject."

Waimate, where he was attended by the ship's surgeon, Dr. Alexander Lane, and was for several months nursed with the utmost solicitude by the Missionary's family.

During this period of forced inactivity Captain Hobson displayed the greatest anxiety that the interests of his mission should not suffer because of his misfortune, and so far as his energies would permit he daily laid his plans for the carrying on of the campaign which had thus been suddenly interrupted so far as he was personally concerned.

Fortunately he was surrounded by a band of men who were loyal, and enthusiastic in the cause he had come to espouse, and he had no difficulty in enlisting the services of those who were prepared to continue the work where he had been compelled to lay it down. In this respect the Missionaries, confidently relying on the traditional justice of the British Government,[1] were particularly zealous, and to them more than to any one else does the ultimate success belong. Had they so much as whispered hostility, the treaty and all its professions would have been rejected and despised. So far from this, they not only lent it the influence of their word, but at this critical stage, when the Governor was lying a stricken man, they became the harbingers of its promises and the apostles of its principles.[2]

To the north went the Rev. Mr. Taylor with Mr. Shortland; to the east the Rev. William Williams, each bearing an authenticated copy of the treaty, and authorised to treat with the principal native chiefs, at properly constituted gatherings, for their signatures and their adherence to the provisions of the national compact.

The meeting in the north, which must rank next in importance to the gatherings at Waitangi and Hokianga, was that conducted by Lieutenant Shortland at Kaitaia. Indeed it is questionable whether in some respects it has not achieved a greater celebrity, for it was here that the

[1] The attitude of the Missionaries toward the treaty was well expressed by the Rev. Mr. Maunsell in a letter to the Colonial Secretary, Mr. Shortland, dated April 14, 1840.

[2] These services were acknowledged in the most generous terms by Captain Hobson.

eloquent chief Nopera (Noble) coined the phrase which has been more often quoted than any other in connection with the history of the treaty: "The shadow of the land goes to the Queen, but the substance remains with us."

On April 27 Mr. Shortland, who had now become Colonial Secretary, accompanied by the Rev. Mr. Taylor, Dr. Johnston, and Lieutenant Smart of the mounted police embarked on board the little schooner *New Zealander*, and steering for the far north, touched first at Mangonui, where they obtained the services of a native pilot, and on the following Saturday anchored in the Awanui River, fully sixteen miles from their destination. Mr. Taylor and the Doctor at once left the vessel, and pushed on to the Mission station, there to arrange the preliminaries with Mr. Puckey, the resident Missionary. The Colonial Secretary remained on board the schooner until the Monday, and then with Lieutenant Smart and the members of his force proceeded up the river to Kaitaia, where they were received with volleys of musketry, and the fearsome evolutions of the war dance. From an early hour on the following morning the chiefs and people were astir, busy with the preparations for the meeting, their demeanour being marked by a cordiality which had been so conspicuous by its absence at Waitangi and Hokianga.

At 10 o'clock the people—a motley and vivacious crowd—assembled on a large grass plot in front of Mr. Matthew's house, where they were addressed by the Colonial Secretary, with a solemnity befitting the occasion and a pomposity [1] which he deemed becoming his station. The illness of the Governor was touchingly referred to as a reason for the speaker's presence; the text of the treaty was read; the purpose of the compact explained; the machinations of the Queen's opponents were denounced, and a promise given that His Excellency would strictly

[1] "The appointment of Police Magistrates was one of the first acts under the new order of things. Mr. Robert (?) Shortland, the first Police Magistrate, after the illness of Governor Hobson, styled himself Acting-Governor, and a more ridiculously pompous functionary could scarcely be imagined."—Commander Wilkes.

perform all the solemn engagements which the treaty imposed upon him in the name of Her Majesty.

With this important difference, that there was but little opposition, there were few features to distinguish the debate from its predecessors. Several of the speakers boldly stated they had been told that the treaty was nothing but a cunning device to enslave them. There were also dark references to a Nga-Puhi plot to drive the *Pakehas* into the sea, but to which they unhesitatingly declared they were not prepared to give their countenance,[1] the speeches as a whole breathing deeply the influence of the Missionaries.

The first speaker was a chief who had accepted the baptismal name of Taylor,[2] who appeared to scent trouble, but subsequently signed the treaty under the name of Reihana Teira.

"This is my speech. We have always been gentlemen; we do not want a shepherd. We will not be hindered getting wood; we formerly cleared any spot of land we liked, burnt the wood; then some once came and built a house on it, and then we quarrelled."

"The *Pakehas* say the Governor comes to take the land," exclaimed a chief whose name has not been recorded. "This is the first time I ever heard the *pukapuka* (the treaty). The *Pakehas* explained it differently. Some people say plenty of *Pakehas* are coming to buy our land, but not for our good. They say the soldiers are come to shoot us, and that the Governor will not be a shepherd for us.[3] They say Mr. Puckey and Mr. Matthew know

[1] "A report prevails and not without foundation that a conspiracy against the Government and Military exists amongst many of the chiefs of this neighbourhood. I know the persons implicated and I will have them closely watched. If there really is any truth in the matter it may be ascribed to the mischievous stories that have been circulated by low, abandoned Europeans who try to persuade the natives that we only wait until we are strong enough, to take possession of the land, and sell it, irrespective of Native claims."—*Vide* Captain Hobson's Letter to Sir G. Gipps, May 5, 1840.

[2] In many cases Mr. Shortland has used the baptismal name of the men who spoke, and in some instances, such as Forde and Marsden, it is now impossible to identify the men from their signatures on the treaty.

[3] A reference to the misrepresentations of the Europeans.

what is to become of us, but will not tell us. These are my sayings."

WILLIAM (Wiremu Wirihana)—" They tell us you are come to murder all the Maoris, but if your works are good you will come to preserve us. If you are like the Missionaries that will be good. We fear the soldiers."

In clear and emphatic tones Te Rewiti, to whom has been given the English name of Davis, exclaimed, " I say ' Yes,' I say ' Yes ' for the Queen. Although some men say ' No,' for the Governor, I say, ' Yes.' If the Governor come to be our shepherd that is good; but if he come to take our land I will not have him. If you say who makes me say, ' Yes,' I say my own heart. Much land has been bought by the *Pakehas*. Let it not be said it has been taken by the Governor. It has been taken before. I have nothing more to say. If you have anything to say, say it now, but do not go home and grumble."

" Let all our sayings be one, let none say ' No,' " was the counsel of Forde. " The Governor has not taken our land, it was taken before. My heart and my thoughts are with the Governor. I say, Yes, yes."

MARSDEN—" We shall not be slaves. Had we gone to other lands we might have been slaves; they have come to protect us. Let not our hearts be dark; let us not listen to words from afar; let us see first. Is it not sin to murder and commit adultery; to tell lies. If what we hear from our teachers is true then what we hear from the Governor is not a lie."

" I have no land to give the Governor," said Toketau (Tokitahi). " We were gentlemen before, we will be greater now. Now we have more blankets, shirts, and trousers. Our houses were once made of rushes; they are better now. I have made my speech."

BUSBY (Puhipi)—" Before the *Pakehas* came we loved our own people. We sometimes quarrelled and then made war; then we made peace again and rubbed noses, then we had another battle. I am glad you are come; let our hearts be one. If quarrels happen who will settle

them? You are so far off. Murder and theft may be suppressed, but what shall be done with adultery? It is carried on privately; do not let it be said that I hide anything."

Pi (Pihere)—"It will be good to see all the adulterers hanged in a row."

"Will a man be taken up if he walk in the night?" was the pertinent question put by Matiu Tauhara (Mathew). "That is all I am afraid of. If a man steal it is right to punish him. This is all I have to say: Let all the Governors and *Pakehas* be like the Missionaries, that we be good. We have not been hurt by them."

"If your thoughts are as our thoughts in Christ, let us be one. We believe your hearts to be good. The *Pakehas* bought all our land, and we have no more," were the words of Matiu Huhu.

The speech of Paratene Waiora (Broughton) concluded those of the minor chiefs.

"There is only one great man," he said, "who cannot be killed, that is the tongue; it often stirs up great wars. My father, Nopera, was sitting in his house reading his Bible when they said he was gone to the north to kill the people. I say send away Pikopo (Bishop Pompallier). Send him back; he is the cause of strife amongst us."

Nopera Panakareao, the most powerful chief in the district, who had accepted the not inappropriate baptismal name of Noble,[1] then rose and delivered the great speech of the meeting—a speech if not the most influential in guiding the native mind at a critical moment it is at least so rich in worldly wisdom, so happy in poetic simile, so full of fervent loyalty, that it has become one of the Maori

[1] "Our chief Noble has become quite a European in his habits. He has a neat little weather-boarded cottage, which is furnished with table and chairs like our own, and his food is much the same. He has purchased tea, sugar, and rice from the European settlers, and is as cleanly with his wife as any white person, and in all respects as comfortable. He assembles his servants and people about him, morning and evening for prayer, and all his concerns are conducted with the utmost order. His Excellency Governor Hobson has just visited this place. He, with his suite, supped at Noble's, and was vastly pleased with him."—Report of Mr. Puckey in *Missionary Register*, 1841.

classics, and deserves to be preserved amongst the finest examples extant of old-time native oratory:

"Here all of you *Pakehas* and Maoris. This is my speech. My desire is that we should be all of one heart. Speak your words openly; speak as you mean to act; do not say one thing and mean another. I am at your head. I wish you all to have the Governor. We are saved by this. Let every one say 'Yes,' as I do. We have now some one to look up to. Some say it will be the *Pakehas* who will offend, I say no; it will be the Maoris. My grandfather brought the *Pakehas* to this very spot, and the chiefs agreed with what my grandfather did. He went on board the ship and got trade. He spread it through the land. Let us act right as my ancestors did. The *Pakehas* went to the Bay of Islands and were murdered. Let us do them no harm. What has the Governor done wrong? The shadow of the land goes to the Queen, but the substance remains with us. We will go to the Governor and get payment for our land as before. If the Nga-Puhi commit evil they will suffer. We have always been friendly with the *Pakehas*. We never went in ships to England or Port Jackson to buy arms to kill our countrymen. If you want to be cut off, go and fight the Governor. Do not, like the chiefs at Hokianga, wish to kill the Governor. Live peaceably with the *Pakehas*. We have now a helmsman, one said, 'Let me steer,' and another said, 'Let me steer,' and we never went straight. Be jealous: look well into your own hearts and commit no evil. The natives did wrong at the Bay and suffered. What man of sense would believe that the Governor would take our goods, and only give us half of it? If you have anything else to say, say it; but if not, finish, and all of you say, 'Yes'—say 'Yes.'"

This oration swept away all vestige of possible opposition as chaff before the wind. No one was bold enough to contend with the redoubtable Nopera, to agree with him were superfluous. The debate therefore abruptly closed with a general exclamation of "*Ae, Ae*" ("Yes, yes") and the assent and signatures of sixty of the principal

chiefs were speedily obtained,[1] so that a few days later Captain Hobson was able to write from his sick-room to the Chief Secretary for the Colonies: "I am happy to report to your lordship that Mr. Shortland succeeded to the fullest extent."

The Ambassador to the west was Captain Symonds,[2] an officer of the British Army, who immediately on receipt of his instructions proceeded to Manakau and there, aided by Mr. Hamlin, a Catechist of the Church Missionary Society, summoned at short notice a meeting of the chiefs. The Missionary explained to the assembled warriors the views of the British Government, and solicited their adherence to the treaty, but the opponents of the measure had been in advance of its advocates, and prejudice was already in the air. Amongst the most active in his hostility was the vacillating Rewa, who having reluctantly signed the document at Waitangi, had speedily recanted.[3] He now sought to make up for his apparent desertion from the ranks of the opponents by the violence of his attacks upon the Government, and Captain Symonds found the chief had been so successful in his misrepresentations that he was not able to do more at the first meeting than to dispel some of the doubts which the ingeniousness of Rewa had created in the minds of all. A few days later the chiefs were again in council, when new forces were gathered from the Waikato, Taranaki, and Taupo. With these Rewa had less influence, with the result that some signatures, and several promises were obtained from amongst the most influential men.

[1] The meeting concluded with a war dance, and general discharge of musketry, and a feast provided entirely at Nopera's expense. Not only did he refuse to accept any payment, but he added to his generosity by sending to the Governor a present of pigs and potatoes.

[2] Captain William Cornwallis Symonds was the son of Sir William Symonds, Surveyor of the Navy, and was Deputy Surveyor of New Zealand. He accompanied Dr. Dieffenbach on some of his exploring expeditions, and made maps of his observations. He was also an enthusiastic student of the native language, and collected a vocabulary of 3000 Maori words. He lost his life in 1841 through his canoe capsizing while crossing the Manakau Harbour.

[3] Rewa had said at Waitangi that his opposition there had been inspired by the Bishop.

But now a new species of opposition was developed. The haughty Te Wherowhero, the potential king of the Waikato, felt that he had been slighted in not being bidden to consult with the *Pakeha* Governor ere this. Why had he been left to this late hour, and who were these who had been placed before him? His dignity was severely wounded; his aristocratic soul rebelled against such scurvy treatment, and in a fit of pique he wrapped his blanket about him and refused to sign.

Feeling that he must be satisfied for the present with whatever measure of success he had achieved, Captain Symonds left Manukau on April 3, and hauling his boats across the portage which divides the Manakau from the waters of the Waikato, he proceeded down the Awaroa river to the Church Mission station at the Waikato Heads. Here he was received with the utmost cordiality by the Rev. Mr. Maunsell[1] who was waiting his coming with no small anxiety. Matters had almost reached a crisis with the Missionary, who in the previous month had taken advantage of a large gathering of natives for religious purposes to introduce the subject of the treaty, a copy of which had already been forwarded to him by the Lieutenant-Governor. The project had been received by the natives in the most friendly spirit, and signatures had been obtained with the utmost alacrity. One important feature, unobserved at the time, had, however, been omitted. No presents had been sent to the Missionary to distribute amongst the signatories. Exception had not been taken to this apparent lack of hospitality at the moment, but word had come into the settlement from the north that all who had signed the treaty at the Bay of

[1] The Rev. Robert Maunsell (afterwards Archdeacon Maunsell) arrived in New Zealand in 1835. He was a "ripe and trained scholar," and after he had mastered the native language became, next to Mr. Henry Williams, the leader of the Missionary movement. He rendered an invaluable service to the cause of Christianity by his translations of the scriptures and prayer-book into the Maori tongue. In July 1843 his house was destroyed by fire, and with it were lost the MSS. of his dictionary, and his revisions of the translated Psalms and Old Testament. He however courageously set to work again almost before the burns upon his hands had healed. A fund of £200 subscribed in England provided him again with a library.

Islands, and at Hokianga had been paid with the Governor's blanket. The insidious nature of this treatment had just dawned upon them when Captain Symonds arrived. The whole settlement was in a state of wildest excitement. Their Missionary had deceived them; payment had been withheld; their signatures had been wrongly obtained. To put matters right they loudly demanded the return of the offending paper that they might tear it to bits and scatter it to the winds. Symonds was, however, able to quieten the tumult with timely explanations, and, what was more to the purpose, distributed a number of blankets amongst the chiefs, promising a similar gift to all others who would subscribe to the terms of the treaty.

The expedition displayed by Mr. Maunsell, but which had come so perilously near wrecking his own influence, proved an unexpected boon to Captain Symonds, who on examination of the signatures thus obtained discovered that with few exceptions all the influential chiefs as far south as Mokau, had acknowledged the sovereignty of the Queen. These few were resident in the districts of Aotea and Kawhia, and were within the sphere wherein was labouring the Rev. John Whiteley,[1] of the Wesleyan Mission. To him accordingly Captain Symonds wrote, "being well assured of the disposition on the part of the Wesleyan Mission to support the Government by every exertion in its power," and confided to him the execution of that portion of his instructions which he deemed could be more expeditiously carried out by the Missionary than by himself.

On April 18 Captain Symonds returned to Manakau, and there obtained seven more signatures. Te Wherowhero[2] was still obdurate, though manifesting no ill-will

[1] Afterwards massacred at the White Cliffs.

[2] Neither Te Wherowhero nor his brother, Kati, appear to have signed the treaty.

In the appendix to Kerry Nicholls' *King Country* appears the following as a portion of the late King Tawhiao's autobiographical narrative: "I remember a European coming to ask Te Wherowhero (Tawhiao's father) to sign the treaty of Waitangi. That European was Mr. Maunsell. The Maori he had with him was Tipene Tahatika. Te Wherowhero said he would not sign. Mr. Maunsell remarked to

towards the Government. His native pride had been hurt, and time had not yet healed his injured spirit.

In these latter negotiations Captain Symonds laboured under the considerable disadvantage that he was unable to procure the services of a competent interpreter, Mr. Hamlin [1] being absent on duties incidental to his station. The lack of all public ceremonial was also to his disadvantage, the pageant of which ever appeals with persuasive force to the impressionable mind of the savage; while the surroundings were not altogether without the suggestion that the crozier was still secretly opposing the Crown.

For the purpose of preserving the consecutive nature of our narrative it will be convenient at this point to digress for a moment, and in that time discuss a debatable point which must ere now have occurred to the reader, viz. what was Bishop Pompallier's attitude towards the treaty? To aid our judgment in this connection two classes of evidence are available,—that of the Protestant Missionaries and the official despatches of those engaged in the promotion of the treaty, on the one side, and the personal statement of his position by the Bishop on the other. Bishop Pompallier had landed at Hokianga in 1838 for the purpose of establishing a branch of the Roman Catholic Oceanic Mission, of which he had been appointed Vicar Apostolic. We have his assurance, which may be accepted without reservation, that he hoped to labour in a part of the country where he would not come into conflict with other Missions, and it came to him as a surprise, and probably as a deep disappointment, when he discovered that the existing Missions had so far covered the country that no such isolation was possible at Hokianga, upon which he had determined as the centre of his operations. But having come he decided to remain; and his advent

---

Tipene, 'This ignorant old man, if he had signed, I would have given him a blanket.' Te Wherowhero was then at Awhitu. Te Wherowhero's name was afterwards put to the treaty, but it was written by Te Kahawai, and not by himself."

[1] Mr. Hamlin, though laying no great pretensions to scholarship, was considered by the Maoris to be the most perfect speaker of their language in New Zealand.

UNIV. OF
CALIFORNIA

Rev. Henry Williams, C.M.S.

UNIV. OF
CALIFORNIA

was a bitter trial to the representatives of the Protestant Missions, who foresaw in it a serious interruption of their work by the introduction to the Maori of doubts and controversies which, while disturbing, were not essential either to their civilisation or to their soul's salvation.[1] Exactly what they anticipated would occur, did occur, with the result that the animosities of religious rivalry were kindled in a way that had never been known between the Anglican and Wesleyan Missions; and the absurdity was not infrequently witnessed of Maoris confidently discussing matters of dogma which for centuries have baffled solution at the hands of trained theologians. The effect of this was to sow the seeds of bitterness in the hearts of the Protestant Missionaries, and there is sometimes noticeable a dearth of charity in their references to the Bishop which unfortunately is not singular in Church history.

We may, therefore, discount on the grounds of prejudice their accusations against the "Catholic Bishop" as much as we please, but we have still to account for the awkward fact, to which Mr. Colenso has drawn pointed attention, that the most violent opposition to the treaty at Waitangi came from the chiefs living under the religious guidance of Bishop Pompallier. The same circumstance was noted by Captain Hobson at Hokianga, by Captain

[1] "Here I may remark that it is impossible to view with unconcern the injurious tendency of religious dissensions among a people just emerging from paganism. Between the disciples of the Bishop and those who have embraced the doctrines of Protestantism there already exists a feeling which borders on hostility, and it is not unusual to hear the former taunted by their adversaries as worshippers of wood and stone, misguided unbelievers, devils, etc. To express sentiments of severe censure against the Roman Catholic Church and its followers is not the most efficient means of advancing the interests of the Protestant Church, and in reply to the illiberal language which is dealt forth so unsparingly on this subject, we may cite among innumerable other facts, the life and actions of Fénélon, the most blameless and virtuous of men, in proof that a Roman Catholic clergyman is not of necessity either a Jesuit or a hypocrite. But holding in view the admitted tendency of religious dissensions to unsettle and weaken the impression of Christianity in the minds of the natives of New Zealand, and at the same time to foster dissension and angry feeling it is certainly to be regretted that an attempt has been made to introduce the doctrines of Rome into a field already preoccupied by the active and zealous emissaries of the reformed Church."—Jameson.

Symonds at Manakau, and by Major Bunbury at Tauranga. Was, then, this widespread disaffection amongst the Catholic converts merely a coincidence? or was it the fruit of suggestion?

It has to be admitted that whatever feelings animated the Protestant Missionaries, at least Captain Hobson was not the victim of religious prejudice. From the first he adopted an attitude of most respectful deference towards the Bishop, a partiality which the Frenchman was not slow to observe and comment upon. When, therefore, the Lieutenant-Governor, took the responsibility of stating in his despatch to Sir George Gipps (February 17, 1840), "The influence against me was easily traceable to the foreign Bishop of the Roman Catholic persuasion," he is at least entitled to the credit—considering the character of the man—of our believing that he would not have made so bold an assertion had he not been fortified by the conviction that there was evidence to support it. The same measure of confidence must be accorded to Captain Symonds, a military officer of, so far as we can judge, the highest integrity. In reporting the result of his mission at Manakau he records the fact that "Rewa the principal follower of the Roman Catholic Bishop, exerted all his influence against me," and that on his return to this settlement from the Waikato Héads a few days later, he was still unable to secure the signatures of certain chiefs, a failure which he attributed "partly to the Bishop's influence." Again bluff Major Bunbury tells us that when at the Otumoetai Pa, near Tauranga, "Another chief expressed some indignation because the Christian chiefs had not, as he said, met them. I presume he meant those from the other *pa* where Mr. Stack's influence was supposed to extend more than his own, and where a Roman Catholic Residency and the Catholic Bishop were supposed to have more influence."

Whether this failure on the part of the Christian natives to co-operate with the residents of Otumoetai in the consideration of the treaty meant their active hostility, or merely a negative indifference to the pro-

posals of the Crown, is not clear, nor is it certain to what extent the influence of the Missionary Bishop and his assistant contributed to either of these conditions, if either existed. Certain it is, however, that neither exerted themselves to aid the consummation of the treaty. Of this fact Bishop Pompallier has made no secret so far as he himself was concerned, and it is unlikely that his clergy would adopt an attitude different to his own. Neutrality he makes the buttress of his position, professing a total disregard for politics; his whole concern being the spreading of the Church's influence and the refutation of heresy. Of this, a perusal of the Bishop's own statement is the least devious road to proof:

On January 1840 Captain Hobson arrived at the Bay of Islands with the qualification of English Consul and Vice-Governor of New Zealand, under the immediate control of the Governor of Sydney in New Holland. The corvette, the *Herald*, brought Captain Hobson and all the members of his approaching administration. The Protestant Missionaries spread the report amongst the natives that this time the Catholic Bishop was going to be taken out of the country by the English man-o'-war which lay at anchor off the coast. They said also that I would not dare to appear at the public meetings that the new Governor was going to hold with the Maori chiefs and the whites, to talk over with them his plans for the Colonial administration of New Zealand. All the natives in the country were astonished both at the arrival of a strange Governor, and at the strange reports that were flying about. The day after his arrival, the Maori chiefs received printed letters from Captain Hobson, inviting them to meet at a place in the Bay called "Waitangi," where a treaty was to be read to them in their own language, and afterwards signed by them. Many of the Catholic chiefs came to consult me, above all the great chief Rewa. They asked me what was to be done under the circumstances in which their country was placed, and whether they ought or not to sign. I answered them that these were political matters which were outside my province. I was only in this country to pasture souls in the word of God, and direct them in the faith, morality, and the Catholic discipline, confer the sacraments of salvation on persons of whatsoever nationality who should have recourse to my ministry in a proper disposition, and that there ended my divine mission. It was for them to determine what they might desire to do with their national sovereignty; whether to keep it or to transfer it to a foreign nation; they were therefore at liberty to sign or not, to

sign the treaty which was going to be put before them; that for myself and my clergy we were prepared to exercise our ministry of salvation for those who signed in the same manner as for those who did not sign. In a word, we were prepared to instruct them in the faith whether they continued to be New Zealanders or became English. Now in this way I kept myself entirely aloof from politics, and the people were at liberty to do as seemed best to them, with regard to their social state of life, and I remained free in what concerned my ministry for the spiritual and Christian life they had to follow in the Catholic Church. I went dressed in my Episcopal cassock, to the great meeting of the chiefs of the Bay of Islands with the whites, over which Captain Hobson presided. His Excellency was surrounded by the officers of the corvette and by a number of Protestant Missionaries. My coming was a great surprise to the latter, and to the natives who had heard that I should never dare to appear there. Captain Hobson received me with much civility and respect, and caused me to be put in a place of distinction. A political treaty which the English Government wished to conclude with the Maoris was read and explained to them. By virtue of this treaty the Maoris became English subjects; they remained masters of their landed property, but they were not allowed to sell, as formerly to private purchasers. If they desired to sell any of their land they could only do so with the consent of the Colonial Government.

While the speeches were being made on behalf of Captain Hobson and the chiefs of the Maori tribes I remained silent; I had nothing to say; they were simply about political matters. One question, however, interested me deeply, it was that of religious freedom about which no one in any way seemed to trouble themselves. Before the last meeting broke up, and it became a question of signing the treaty I broke silence. I addressed Captain Hobson, begging him to make known to all the people the principles of European civilisation which obtain in Great Britain, and which would guarantee free and equal protection to the Catholics as to every other religion in New Zealand. My demand was immediately acceded to by Captain Hobson, who made a formal notification of it to all the assembled people, to the great satisfaction of all the Catholic chiefs and tribes, who triumphed in the fact of my presence in the face of the Protestant Missionaries, and at the speedy compliance with the few words I had spoken. As to the political treaty, was it or was it not understood by the natives? That is a mystery difficult to solve. The result was that some chiefs signed it and some did not. But the Catholic religion gained instead of losing its dignity and its influence over the minds of the people. When a certain number of natives had signed the treaty the sovereignty of England over the whole of New Zealand was declared by a salvo

of artillery fired by the corvette *Herald*. The English flag floated over the country, and Mr. Hobson took the title of Vice-Governor of New Zealand. As for myself, I exercised my ministry as freely as before over all parts of this large archipelago. The Governor seemed to have a particular regard for the Catholic Bishop. His Excellency promised that my future missionary vessel should be free from all imposts, and that everything that came to me from beyond the country for the purpose of my labours should be free from duty. My position at this time disappointed not a little the ill-will of those who had spread sinister reports about myself and my clergy, some weeks before. The people became more and more confident in the idea that Protestantism had always been deceiving them. They saw, moreover, that we had come to New Zealand but for them and the ends of salvation, in favour of every soul that lived in the country, not troubling ourselves as to what national flag they belonged. They saw in our hands but one standard, that of the cross that leads to Heavenly glory. At one time they had said the Catholic had come to seize upon the sovereignty of New Zealand, and they beheld him remaining and working just as before, after possession had been taken. Many natives in their uprightness said, "It was all very well for the Protestant Ministers to tell us so much about the Catholic Bishop taking our country, but on the contrary, it was themselves, in their own nation who took it from us." From all these new circumstances there resulted on the part of the people, English and Maoris, but especially the latter, more esteem, more confidence, more attention for the Bishop and the Catholic Clergy.[1]

The Bishop's publicly expressed views receive valuable confirmation from Captain Lavaud, of the French frigate *L'Aube* which reached the Bay of Islands in July 1840. After paying his respects to the Lieutenant-Governor, the Captain proceeded to the Bishop's house and there had an interview with the prelate, the substance of which he subsequently reported in the following terms to the French Minister of Marine:

[1] "During my residence at the Bay of Islands, on this occasion, I derived much pleasure from the acquaintance and conversation of M. de Pompallier, the chief of the French Catholic Mission to the South Seas, and Bishop of Oceania, who was held in high esteem by every individual in the settlement, not only on account of his polished and courteous demeanour, but from his more important merits of learning, professional zeal, and practical benevolence. Whatever may be said of his persuasion, it is at least evident that no motives of a worldly or ambitious nature could have thus induced a man of rank and wealth to devote himself to the arduous and hazardous duties of a missionary in the Pacific."—Jameson.

I arrived at the Bishop's only in the afternoon, so long is the passage from Russell-town to Kororareka against contrary winds and tide. I was curious and impatient to hear what he might have to communicate to me. Still I was reassured as to the situation in which he found himself placed with regard to the authorities, by the very pleasing manner in which Mr. Hobson [1] had just spoken of him to me: the feelings of esteem and consideration which he expressed; the respect his name evoked from all those present, and the well-deserved praise they gave to his character and his tolerance. Compared with the Anglican Missionaries he was the real good man, the friend of the poor and of the savages, having no other ambition than to call to the Catholic faith and to civilisation the natives, to whose happiness he consecrates his existence, hoping to receive in the other world a reward which his adversaries prefer to taste in this one. Their evangelic labours are thus always accompanied by schemes of aggrandisement of luxury, and of riches, things in which they have until now made considerable progress. To stop them nothing less was necessary than the prohibition of the Queen (of England) forbidding them henceforth to acquire land from the natives, and limiting the holdings to 2500 acres. These gentlemen were indeed not slow to notice that though they were occult instruments of British power in New Zealand, they were its first victims. One must not, however, believe that the Anglican, Wesleyan, Methodist, and other Missionaries occupy themselves exclusively, and all of them, with speculations and means of making their fortunes; they also occupy themselves with the instruction of the people, but I shall have opportunity later on of returning to this subject. On my arrival at Bishop Pompallier's I received the marks of kindness which that excellent pastor lavishes on all his fellow-countrymen. He thanked me more than it was necessary for him to do for all my care and attention towards the priests during the voyage, and he did not conceal from me that this little increase of subjects sent out to him by the Marist community had been so necessary for so long a time that it was no longer by twos, but by tens and even twenties that priests ought to be sent out to him to help him to save the people of New Zealand, of whom 25,000 were already on the way to Catholicism. He also told me how grateful he was to the French Government for the protection it granted him, as well as to his mission in these seas. He spoke to me of the acts of kindness of the King, of the Queen and the Royal family, and principally of the interest H.R.H. Madam Adelaide was taking in the success of his labours. I took great pleasure in

[1] Captain Lavaud mentions that during this interview he had always addressed the Lieutenant-Governor as "Captain," and not as His "Excellency." He explains, however, that he did so "more by instinct than with any intention of being discourteous."

listening to Monsignor Pompallier on this subject, but I had not lost sight of the fact that he must have other things whereof to inform me. I, too, since I had seen Captain Hobson, was rather eager for news, and curious to know the mission of the *Herald*. I therefore profited by the first opportunity I had to ask the Bishop to speak to me about the political events of this country, but Monsignor is like they all are, he loves his Mission, his successes, his hopes, and it was with difficulty he decided upon changing the subject of conversation, but at last he did it most graciously. I learned thus from him, that from the month of February 1839, Captain Hobson, who had arrived some days previously in the Bay of Islands, with the title of "Consul" had assumed the rank of Lieutenant-Governor of the Islands of New Zealand conferred on him by the gracious will of the Queen; that an assembly presided over by him, and attended by most of the great chiefs of the North Island, as well as several Europeans of distinction, Monsignor himself included, had taken place, the aim of which was to make known to the New Zealand chiefs that the Queen would grant her powerful protection to the New Zealand tribes who had solicited it, only under the condition that the treaty proposed to them would inform them that H.B.M. would extend her sovereignty over the Islands of New Zealand only as far as these chiefs would consent to sign it. I here transcribe this official document, yet but little known, and so singularly reproduced by some persons.[1]

It will be noticed that at the Assembly of which I have just spoken, which was held in Busby's in Wai-Tanghi, there was not one single Frenchman, except Monsignor. They thought by their absence (at least that was their intention) to protest against what was taking place. The Bishop who certainly was not obliged to inform me of the motives that made him act differently, told me, however, that having received a special invitation from Mr. Hobson, he thought he ought not to refuse his presence, inasmuch as his Mission was quite a spiritual one, and that his being an ecclesiast put him outside of all politics, and that it was most necessary for the success of Catholicism in this country that all should be convinced that in that respect he was perfectly indifferent, that every day he was trying to avoid giving his conduct the slightest doubt of the purity of his intentions, that besides in the assembly Captain Hobson had in his address to the New Zealand chiefs, of whom several were Catholics, informed them that Bishop Pompallier, pointing him out, would remain amongst them, that he would be protected there, as well as the religion he preached, in the same manner as the British Missionaries and their co-religionists. At this assembly the New Zealanders appeared uneasy and anxious to know how the

[1] The treaty is here transcribed in the Captain's Despatch.

meeting would end, during which several speeches were delivered by the chiefs, partly to the Governor and partly to the New Zealanders themselves. At one moment it was feared the treaty would be rejected. Several chiefs spoke against it, and one of the most prominent, Rewa-Rewa, went as far as to say, " Let us drive away the white chief. What does he come here for ? To take away from us the liberty you are enjoying. Do not believe his words. Do you not see that, later on, he will use you to break stones on the roads ? "

This chief belonged to the Catholic religion, but his allocution was opposed by two of the principal chiefs of the Island, and of the district of Hokiangha, as well as by Pomare the nephew of the celebrated chief of that name of Kawa-Kawa, in the Bay of Islands, all partisans of the Williams Mission. This allocution (Rewa's) did not have the success he expected for it, and the acceptance took place, although without enthusiasm, by the majority of the members of the assembly. Several gave their adhesion by signing the treaty, others retired without signing, and already on the following day, after a few small gifts, the sovereignty of H.M. the Queen of England was proclaimed over the North Island of New Zealand. Eye-witnesses report that this declared sovereignty is a conjuring trick on the part of Captain Hobson, but in that case, at least we must admit that the trick was played rapidly and skilfully enough. Other official declarations were made on the same subject.

Here then are the facts—conflicting it is true—from which no doubt conclusions equally conflicting will be drawn. Having regard to the high character of the Bishop it is inconceivable that he would desire to do anything but that which was right. It is, however, equally possible that he experienced a difficulty in completely suppressing his national feelings, and that he had unconsciously created for himself the paradoxical position of being neutral as an ecclesiastic, and yet hostile as a Frenchman.

Along the populous shores of the Bay of Plenty, and in the interior behind Tauranga, Hobson had as his allies the Revs. Brown and Stack, while William Williams [1]

[1] The Rev. William Williams does not appear to have obtained the signatures of Te Kani-a-Takirau or Houkamau amongst the chiefs of Waiapu. It is unlikely that men of importance such as these were overlooked, and we may therefore conclude that they objected to sign. Mr. Williams reported that he would require sixty more blankets to complete the gifts to the chiefs in his district. Mr. Williams was afterwards first Bishop of Waiapu.

carried the treaty from *hapu* to *hapu* through the rugged country on the eastern coast between East Cape and Ahuriri.[1] In a like manner upon Missionaries Chapman and Morgan devolved the onerous task of bringing the turbulent Arawas at Rotorua into line. The manner in which these minor envoys laboured, and the extent to which they succeeded is modestly told in their letters to the Lieutenant-Governor; but this much must in justice be said, that though their proceedings were necessarily less picturesque in their setting, and less sensational in their climax, they were equally sincere with those who garnered in the wider fields, and who in consequence have loomed more prominently in the historical perspective.

A mission upon a more extensive scale and one fraught with more important issues was entrusted to the Rev. Henry Williams. To this virile Missionary was allotted the task of bearding the lion in his den, for the Lieutenant-Governor had every reason to believe that the officers of the New Zealand Company would use whatever influence they possessed to prevent the consummation of a policy which in its ultimate effects they surmised would be so prejudicial to their own. For this assumption events proved there was only too much justification. The Government had, however, put its hand to the plough; and in Mr. Williams, Colonel Wakefield found a match both in determination and diplomacy.

A small schooner, the *Ariel*, owned and sailed by Captain Clayton, was chartered for the journey, and late in March they set off, calling at Tauranga and Poverty Bay *en route*, leaving copies of the treaty for local circulation as they went. The *Ariel* reached Port Nicholson late in April, her coming being by no means a welcome circumstance to the principal agent of the Company. The first meeting between Colonel Wakefield and the Missionary took place on the Saturday after arrival, at the house of Mr. Hunter, and was more animated than friendly. The former had either not yet received—or chose to

[1] The district now surrounding Napier.

ignore—the private instructions of his superiors in England, to afford Captain Hobson all the aid and assistance in his power towards the attainment of British sovereignty.[1]

For ten days the Colonel doggedly held on his course of opposition, during which time there was a frequent clash of wordy weapons, the soldier seeking to vindicate the independence of his settlement on the ground that they had acquired their rights from the chiefs prior to the intervention of the Crown; the missionary maintaining that no such rights could be acquired by British subjects without the consent of the Sovereign.

Whether or not the constitutional nature of this argument appealed to the Colonel, it is impossible to say. In all probability it did not, but there are ample reasons for concluding that the governing influence in his conduct was a desire to obtain possession of a block of forty acres of land in what was then the most valuable portion of the infant settlement of Wellington, and to which Mr. Williams had acquired an undoubted title. Wakefield's subsequent actions at least indicate that his surrender did not carry with it his conversion to the treaty, which he still strove to persuade himself could not affect the purchases of the Company. But whatever the considerations that influenced him, just as the Missionary was preparing to depart in disgust, he at length[2] consented to withdraw his

[1] "I desire to impress upon you the anxious wish of the Directors that you, and all the servants of the Company, should do whatever may be in your power to promote the success of Captain Hobson's mission, and to accelerate as much as possible the time when it is to be hoped that he, as Her Majesty's representative may establish a British authority and the regular application of English law, not only in the Company's settlements, but throughout the Islands of New Zealand."—Extract from a letter written by Mr. John Ward, Secretary to the Company, to Colonel Wakefield, after the Company had been advised that its proceedings were illegal.

[2] "On the Wednesday following, while preparing to take my departure—not being able to obtain the signatures required owing to the opposition of Colonel Wakefield and others, to the treaty between the chiefs and Her Majesty—Colonel Wakefield came to me, making a most ample apology, and expressed his regret that he should have given way to his hasty feelings on the previous Saturday, and hoped that I should not leave the port with unfavourable feelings, and that he was ready, if I

objections to the chiefs considering the treaty, and retracting what Mr. Williams has been pleased to designate as his "insolent" remarks.

The character of the terms in which the Colonel was likely to address the Missionary may be judged from a paragraph in a letter indicted by him to his directors on May 25, 1840, in which he declares: "I cannot express to you the feelings of repugnance entertained by the respectable colonists who came into contact with Mr. Williams, towards him, on account of his selfish views, his hypocrisy, and unblushing rapaciousness. He frequently said that finding I had been before him in the purchase of land in the Strait without consulting him, he had endeavoured to do the best for himself, and had disparaged the Company and its settlers to the natives. On the whole, it was only by a great effort, and in the hope of benefiting the colony that I could bring myself to hold any terms with this worst of land-sharks." [1]

The hostility of the Company's principal agent once removed, thirty-two of the chiefs signed the treaty readily enough on the 29th of the month, the impression made on Mr. Williams's mind being "that they were much gratified that protection was now afforded to them in common with Her Majesty's subjects."

In his marked antipathy to Mr. Williams and all that he did Colonel Wakefield has endeavoured to deprecate the value of these proceedings in his report to his superiors, wherein he takes the responsibility of saying, "The natives executed some paper, the purport of which they were totally ignorant," and insinuates that the whole transaction took place in an underhand way

---

wished, to make a public apology. The fact was that Colonel Wakefield wanted the land, and was willing to make any sacrifice confined to words."—Carleton's *Life of Henry Williams*.

[1] This letter, written subsequent to the Colonel's apology, was first made public through the columns of the London *Times*, and it was not for months afterwards that Mr. Williams heard of it. The history of the land transaction referred to, which excited the indignation (righteous or otherwise) of Colonel Wakefield, is fully told in that interesting book, Hugh Carleton's *Life of Henry Williams*, vol. i. pp. 237-243, and should be read by all impartial students of the question.

and had neither the countenance nor the assistance of the colonists."

The *Ariel* then crossed over to Queen Charlotte Sound, "where," says Mr. Williams in his Memoir, "we saw all who were to be seen there. We crossed over to Kapiti, Waikanae, and Otaki the stations of the Rev. O. Hadfield. The treaty was explained at all these places and signed.[1] On this visit I saw in the Bank at Wellington a map of New Zealand about six feet in length, and was told by the authorities of the New Zealand Company that the coloured portion was the property of the Company from the 38° to the 42° parallel of latitude. At this time there was no one in connection with their Company who knew anything of the language. A man named Barret could speak a few words in the most ordinary form. This man alone was the medium of communication between the Maoris and the Company in all their affairs, and the deeds of purchase were drawn up in English, not one word of which was understood by the Maoris."

It had been Mr. Williams's intention, after completing the collection of the signatures in the vicinity of Cook Strait, to proceed to the far South, soliciting the assent of the Ngai-Tahu tribe to the terms of the treaty. To this end he had already entered into an arrangement with Captain Clayton, who like the loyal sailor he was, readily agreed to forgo his more lucrative coastal trade in order that his vessel might remain at the disposal of the Government. Before this section of the voyage could be undertaken, however, it was ascertained that the Governor, deeming the mission worthy of some more ostentatious display of power than could be effected by a schooner, had commissioned Major Bunbury of the 80th Regiment to sail with Captain Nias in Her Majesty's frigate *Herald*,[2]

[1] Amongst others, by Te Rauparaha and his niece Topeora, the poetess, on May 14.

[2] Immediately after his seizure, Captain Hobson had dispensed with the services of the *Herald*, on account of his personal differences with her Captain. She then returned to Sydney, but Sir George Gipps sent her back again, telling Captain Nias that "naval co-operation was essential to the enterprise at New Zealand, as the Queen's sovereignty was established over only a small portion of the Northern Island."

for the purpose of visiting the more important Southern settlements.

On hearing of this, Mr. Williams returned with all expedition to his duties at Waimate, which place he reached on June 10, bringing with him the famous Ngati-Awa chief, Wiremu Kingi, whose anxiety to see the Governor had induced him to travel all the roadless miles which lay between Waikanae and the Bay of Islands.

On the submission of his report to the Governor, Mr. Williams was the recipient of the most hearty congratulations from Captain Hobson, who recognised in the service of the Missionary an arduous task well and faithfully performed in the interests of the Crown.

On the morning of April 28 the *Herald* left her anchorage in the outer harbour of the Bay of Islands, carrying with her Major Bunbury,[1] commissioned to accept the signatures of the Southern chiefs; Mr. Edward Marsh Williams engaged to act as interpreter, and a small company of marines whose presence it was thought would add somewhat to the impressiveness of the occasion. Captain Nias was authorised "to display the force of his ship along the coast," and Major Bunbury was furnished with complete instructions for the governance of his conduct in all his negotiations with the native people, which needless to say, were to be continued along the strictly honourable lines which had hitherto been observed by the Lieutenant-Governor. Pursuant to these instructions the *Herald* entered the Coromandel harbour next

[1] Major Bunbury, K.T.S., and a portion of his regiment (the 80th) were sent to New Zealand by Sir George Gipps in H.M.S. *Buffalo*, as the result of a request from Captain Hobson for some military support. They left Sydney just as the news of Captain Hobson's illness reached the seat of Government, and Major Bunbury was given a commission to act as Lieutenant-Governor in the event of Hobson's death or resignation.

In his *Reminiscences* the Major states that Captain Hobson begged him to undertake this Southern mission in order to relieve him (Hobson) from the necessity of again sailing with Captain Nias, with whom he had several violent quarrels about the salutes he was to receive and other similar details. "It was," says the Major, "a grievous sacrifice to make, the troops not having yet landed or arrangements been made for their accommodation, but I could not prevail upon myself to refuse him."

day (30th), and Major Bunbury, accompanied by Mr. Williams, landed at the house of Mr. Webster, an American whose claims to land in New Zealand have since been the subject of searching enquiry by his own country. The purpose of this visit was to arrange a time and place at which the chiefs might be invited to a *korero*. Monday May 4, and Mr. Webster's establishment were selected to fill these essentials, and messengers were accordingly despatched to the various surrounding *pas* to bid the chiefs to the conference. Hearing that the Scottish exile, Captain Stewart, the discoverer of the southern Island which bears his name, was at Mercury Bay, a special messenger was hurried off to him requesting that he would pilot the *Herald* in these waters, and likewise use his influence with the chiefs of Mercury Bay in the direction of securing their presence at the meeting, to both of which the sealer Captain gave a ready response.

"On the day appointed," so writes the Major, "Captain Nias, with several officers of the ship, together with Mr. Williams and myself, went on shore at 11 o'clock, but no native chiefs had at that hour assembled. A considerable number of Europeans appeared, however, to have been attracted by the report of the expected meeting. Subsequently a number of natives did assemble with six chiefs of different tribes. Mr. Williams explained the treaty; its object in consequence of the increasing influx of strangers; and that the claim for pre-emption on the part of the Crown was intended to check their imprudently selling their lands without sufficiently benefiting themselves or obtaining a fair equivalent. After a variety of objections on the part of the chiefs we succeeded in obtaining the signatures of four, one of these being the principal chief of the district the celebrated Horeta,[1] of Bannin's Island notoriety. The principal orator, an old chief named Piko, and another of inferior note, refused to sign, alleging as a reason that they wanted more time to assemble the different tribes of the Thames district,

[1] Horeta te Taniwha, the celebrated chief known as "Hook-nose," who remembered Cook's visit to New Zealand.

and to consult with them, when they would also sign; but that he could, for himself, see no necessity for placing himself under the dominion of any prince or queen, as he was desirous of governing his own tribe."

This policy of procrastination was obviously induced by the intelligence which had reached them of the arrest at the Bay of Islands of a native, Kiti, for the murder of Mr. Williams's shepherd, Patrick Macdonald, and of his trial and subsequent condemnation. They did not complain of the injustice of the punishment, but the whole proceeding was so novel in its character, and so dubious in its ultimate result that they felt prudence warranted a deeper reflection than the subject had yet received. They therefore hesitated before committing themselves to a policy, the end whereof they could not see.

There was also a passing difficulty with those chiefs who signed the treaty, for these gentlemen elected to entertain so exalted an idea of the Queen's munificence that they deemed the homely blanket offered to them as being altogether unworthy of so great a Sovereign's generosity, and expressed a decided preference for forage caps and scarlet cloaks. There was greater unanimity displayed over the feast of pork and potatoes which Major Bunbury had thoughtfully provided for their entertainment before he left.

After completing arrangements for securing the signatures of a few eligible chiefs who were living near the Mission station of the Rev. Mr. Preece, Major Bunbury, late in the evening of Friday the 8th, took his departure from Coromandel in the schooner *Trent*, chartered from Captain Bateman, and coasted round to Tauranga, a district where, in consequence of a war with the Rotorua people, the claims of the Crown had not been enthusiastically received. On Sunday, at nightfall, the vessel arrived at the entrance of the harbour, but prudent seamanship dictated the wisdom of remaining in the offing till the morning, when the treaty party landed at the Mission station and were welcomed by Mr. Stack.

"I was agreeably surprised," wrote Major Bunbury

to Captain Hobson, "to learn that most of the native chiefs in this neighbourhood had already signed the treaty, the exception being the principal chief, and one or two of his friends at the Omimoetoi (Otumoetai) *pa*. This *pa* we visited the same evening, accompanied by Mr. Stack. It was a very extensive fortification, and appears to contain about one thousand men. The chief who had declined signing is a very young man, and his manner was timidly reserved and less prepossessing than most of those I had before seen. On our taking leave he made the usual remark, that he wanted to consult the other chiefs, and that he would meet us with them at the Mission station on the morrow. On the following day he did not speak until the close of the conference, and then only in private to Mr. Williams—after Mr. Stack and I had left them—to enquire how much he was to get for his signature.[1] Another chief expressed some indignation because the Christian chiefs had not—as he said—met them. I presume he meant those from the other *pa* where Mr. Stack's influence was supposed to extend more than to his own, and where a Roman Catholic European residentiary and the Catholic Bishop are supposed to have more influence."

A third chief, evidently of an enquiring mind, created some amusement by his quaint method of arriving at a complete analysis of the position. The debate had to all appearances closed—his own speech being no small contribution to the oratory of the day—and he was approached with a view to securing his signature, he firmly deprecated everything in the nature of hurry, and calmly *taihoa-ed*[2] the whole proceeding.

"Now first let us talk a little," he said. "Who was the first stranger who visited our shores?"

On being told it was Captain Cook, he continued, "And who was Cook's king, was he not Georgi?"

[1] This was what the natives called "making their hearts good." "Pay us first and we will write afterwards." "Put money in my left hand and I will write with my right hand," was how they often expressed it.

[2] *Taihoa* = delay, postpone, put off, reserve for further consideration.

To this a reply was returned in the affirmative. "And who then," he asked, "is this Queen?"

Major Bunbury took some trouble to explain to him that the King George to whom he referred had been dead for some years, as also his two sons George IV. and William IV., who had succeeded him on the throne, and that the present Queen now reigned because she was the next in line to these dead monarchs.

This modest little dissertation on the Royal genealogy appeared to satisfy him on that point, for he immediately adverted to the native wars, and more particularly to their own hostilities with the Rotorua tribes. Major Bunbury assured him that one of the principal objects of his mission was to persuade all the tribes at present at war to accept the mediation of the Governor, and to induce them to abide by his decision.

"If then your nation is so fond of peace, why have you introduced into this country firearms and gunpowder?" was his pertinent rejoinder.

To this Major Bunbury replied that the effects of this traffic had been much deplored by Her Majesty's Government, who were most anxious to mitigate its consequences by substituting justice and a regular form of government in their country for the anarchy which had prevailed, but this could only be done by the surrender of the sovereign rights to the Queen as asked for in the treaty.

His next enquiry was whether the Queen governed all the white nations?

"Not all," replied Major Bunbury, "but she is the Queen of the most powerful white nation." The Major then went on to explain that Britain had acknowledged the Maoris as an independent nation, but that arrangement had proved abortive in consequence of the native wars and their want of cohesion. To themselves alone therefore were to be attributed the evils from which they suffered. As a corrective for these political troubles the Government had not leagued themselves with other white nations to force an unwelcome authority upon them, but they had come direct to the Maoris themselves, and asked

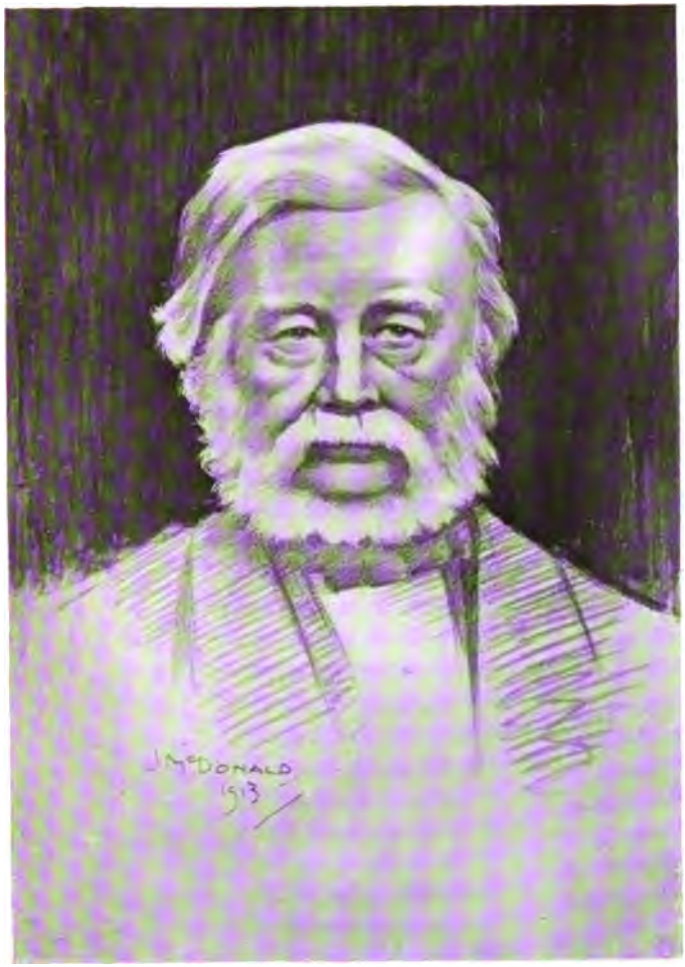
them as a spontaneous gift to vest in Britain the power to avert the evils which were assuredly accumulating round them; evils due to the increasing influx of the *Pakeha*, and who must otherwise remain subject to no law and amenable to no control.

"On being told," continues Major Bunbury's report, "that I was a chief of a body of soldiers, and that I had served under the monarchs already named, he enquired should his tribe, agreeable to my request, abstain from making war upon the natives at Rotorua, would the Governor send a portion of my force to protect them? I told them Your Excellency desired rather to mediate between them, and only in cases of extreme emergency would you be prevailed upon to act in any other manner. If, however, your arbitration was applied for I had no doubt the custom of their country would be complied with, by your insisting on a compensation being made to the party injured, by the party offending."

Major Bunbury then dwelt upon the sale of native lands, and the right of pre-emption claimed for the Queen, explaining that this restriction was intended equally for their benefit, and to encourage industrious white men to settle amongst them to teach them arts, and how to manufacture those articles which were so much sought after and admired by them. This course, he pointed out, was preferable to leaving the sale of large tracts of country to themselves, when they would almost surely pass into the hands of men who would never come amongst them, but would by their speculations hamper the industrious. The Government being aware of the intentions of these men—many of whom had no doubt counselled them against signing the treaty—would nevertheless unceasingly exert themselves to mitigate the evils following in the train of the speculators, by purchasing the land directly from the natives at a more just valuation.

To this the Nestor of the tribe replied that there was but cold comfort in that for them, as their lands had already gone to the white men, but the land had been fairly sold and fairly bought.

UNIV. OF
CALIFORNIA



MAJOR BUNBURY, K.T.S.

UNIV. OF
CALIFORNIA

Feeling that he had now said all that he could say of a nature likely to influence the chiefs, and knowing the constitutional abhorrence on the part of the Maori to hurry in such matters, Major Bunbury intimated that he had still another *pa* to visit, and departed, leaving Mr. Williams to answer any new points which might be evolved in the fertile brain of the men who spoke for the tribe. Their further deliberations, however, took a pecuniary rather than a legal turn. Presents were demanded, and when Mr. Williams indicated that Major Bunbury would doubtless arrange that Mr. Stack should distribute his gifts to those entitled to receive them the sceptical diplomat, who believed in having his bird in the hand, was candid enough to remark that he was not enamoured of prospects so remote.

Before leaving the district Major Bunbury visited the chiefs of the Maungatapu *pa*, a stronghold of great strength, peopled by a tribe of considerable importance. These men being well disposed towards the Government had, with two exceptions, previously signed the treaty, and their reception of the Governor's representative was most cordial. The hospitality of his table was offered by Nuka, the principal chief, whose engaging manners and admirable bearing so impressed the visitor that he estimated his good-will as worth securing at the cost of "some mark of distinction" if ever it came within the policy of the Government to so honour the more discerning of the chiefs.

"I have deemed it expedient to enter more fully into the detail of this conference," wrote the Major to the Lieutenant-Governor in rebuke of the disloyal speculators, "as one which not only shows fully the general character of the natives, but also the nature of the obstacles I may hereafter expect to meet when principles alien to the Government have been instilled by interested Europeans into their minds, as exemplified also at Coromandel Harbour. Neither will I disguise from Your Excellency my regrets that men professing Christianity should, in a country emerging from barbarity, whose inhabitants are scarcely able to comprehend the simplest doctrines of the

Christian religion, endeavour to create distrust of its Ministers—of whatever persuasion—Christianity in any shape, with these people being better than the deplorable condition of many of them at present. It is not the specious professions of a religion which asserts itself unconnected with civil Government which should blind us to the political disunion it creates, but rather its sincerity should be tested by its acts and their effects whether it seeks to open a new field of labour before uncultivated, or to paralyse the efforts of those who have laboured to improve the soil by establishing themselves upon it. The latter I conceive is incompatible with such professions, while this country contains so vast a field untried, but still it is to be hoped reclaimable."

At the conclusion of the Tauranga conference Major Bunbury resumed his journey towards the south, the Missionaries being commissioned by him to continue their negotiations for signatures as opportunity offered. With the Arawa people at Rotorua, they had but poor success, for the reason that the members of that tribe were not altogether free to exercise their own will. Worsted in recent wars by Hongi and other victorious chiefs, the Arawas had in self-defence sought an alliance with the great Te Heuheu, of Taupo, whose protecting *mana* was at this time thrown over them, and fearful lest they might forfeit his good-will should they adopt a course to which they had every reason to believe their ally was hostile, they refused to subscribe to the treaty until the voice of Te Heuheu had been heard. This leads us to a point where it will be convenient to consider the attitude adopted towards the treaty by this remarkable man.

Te Heuheu Tukino was the second chief of that name, and was a leader endowed with exceptional power, being large of body and of brain. His home was on the shores of Lake Taupo, and by claiming certain geographical features as portions of his own body, he had thereby rendered his domain sacred, and so limited the right to dispose of it to himself. He was not amongst the chiefs present at Waitangi, for under the limited notice given by

Captain Hobson, that was not possible. It is even within the bounds of probability that had the messengers of the Lieutenant-Governor reached him he would have dismissed them as they came, for of this he was firmly convinced—that he was "a law unto himself," asserting his own *rangatiratanga* as sufficiently strong to rule his own people, for which he neither needed nor desired foreign assistance. His first introduction to the treaty came to him through his younger brother Iwikau, who, together with another chief of Taupo, Te Korohiko, were at the then small settlement which has now grown into the city of Auckland, when they were met by Captain Hobson's messengers, and invited to Waitangi. Iwikau and his companion was in charge of a company of Taupo natives who had gone to the shores of Waitemata harbour for the purpose of acquiring European goods. They had packed bundles of flax fibre on the backs of their slaves, who had carried this medium of trade over trackless miles to the coast in order that it might be exchanged for guns and powder. While trafficking with the *Pakehas* news came of the projected meeting at Waitangi, and some of the Nga-Puhi chiefs—so we are told—thus addressed Iwikau: "Go you to Waitangi, for you are the fish of the stomach of the island.[1] The *mana* of Queen Victoria is about to be drawn as a cover over the island. All we chiefs of the native people will pass under her and her *mana*, that we may not be assailed by the other great nations of the world."

To this Iwikau answered: "I will not be able to attend that meeting if such is its object, namely consenting to the *mana* of Queen Victoria being placed over us. The right man to consent to or reject such a course is my elder brother, Te Heuheu, at Taupo; and any action on my part might be condemned by him."

This objection was combated by the messengers from Nga-Puhi, who replied: "By all means go, that you may acquire red blankets to take back to your elder brother at Taupo."

[1] Meaning that he was the representative of the central district.

Iwikau was still obdurate, feeling that he had no authority to compromise his tribe in the absence of his superior chief, but the vision of the red blankets was more than Te Korohiko could resist, and he joined to those of the Nga-Puhi chiefs his own solicitations: "Oh, let us go that we may acquire the red blankets."

This appeal finally broke down the resistance of Iwikau. They attended the conference at Waitangi, and amongst others of influential rank were invited to sign the treaty. Before signing, Iwikau remarked to Captain Hobson, "I have heard the payment for the chiefs' consent to the Queen's rule consists of blankets." To which the Queen's officer, always anxious that his presents should not be misunderstood, replied, "No, not exactly. The blankets are not payment, but a friendly gift to you folks who have come from afar, and as a means of keeping you warm on your home journey."

The point of distinction was evidently neither so wide nor so fine as to cause Iwikau any alarm, and he signed the document with a portion of his *moko*, his clan being Ngati-Turumakina. Te Korohiko also signed, and when the gathering had broken up they returned to Taupo to report their proceedings. They met Te Heuheu at Rangiahua, his *pa* at Te Rapa, where he stood in the midst of the assembled people, a giant amongst men. When the self-constituted ambassadors had concluded their explanations, and produced their blankets the storm which Iwikau had secretly feared burst upon them.

"What amazing conduct is this of yours? Were you two, indeed, sent to perform such acts? O say! O say! is it for you to place the *mana* of Te Heuheu beneath the feet of a woman. I will not agree to the *mana* of a strange people being placed over this land. Though every chief in the island consent to it, yet I will not. I will consent to neither your acts nor your goods. As for these blankets, burn them."

Thus did Te Heuheu assert his prerogative, and scorn the interference of the stranger, but he was soon soothed into a more reasonable frame of mind, by Iwikau, who

urged his angry brother to await future developments when he would himself see the treaty. " Be not so severe and you can state your thoughts to the Queen's official yourself, for he is travelling the islands of Ao-tea-roa and Wai-pounamu, seeking you, the surviving chieftains, that you may agree to that marking."[1]

Te Heuheu consented to wait, and the blankets were for the moment preserved. At length news arrived that Parore, a Nga-Puhi chief, and the Queen's official were on their way to Rotorua to bear the treaty to the Arawa chiefs. Then Te Heuheu thus instructed his people: " When the officer reaches the Arawa at Rotorua I shall attend. Let the tribe accompany me, armed, as trouble may arise over my declining to accept the Queen's rule."

There was much burnishing of rusty arms and snapping of fire-locks at Taupo for the next few days, in anticipation of possible contingencies, for these inland tribes had not yet fully realised the peaceful nature of Britain's mission. Living as they did in the centre of the Island, they were less corrupted by the influence of the degenerate whites, and had neither seen nor felt the need for the interposition of a correcting hand in the same way that the imperative necessity for a change had appealed to the residents of the coastal districts.

Neither were the tribesmen of Te Heuheu being influenced by the same considerations that were driving Nga-Puhi to accept the gospel from the Missionaries and the treaty from the Government. For many years the northerners had enjoyed almost a monopoly in the business of procuring guns, and this superiority in weapons had enabled them to levy a bloody toll upon their southern neighbours. With the increase of traders and the enlarged enterprise of the tribes less favourably situated, this advantage was rapidly receding. Others were securing guns as well as they, and the leaders of Nga-Puhi saw that the day was not far distant when their victims would retaliate, and they would perhaps receive as good as they had given. They therefore welcomed the gospel as a

[1] The writing of the treaty.

shield, and the intervention of British authority as a bulwark that would stand between them and their enemies whenever they should think fit to seek satisfaction for former injuries on something like equal terms. Not so the Taupo tribes, who were less controlled by such motives. Their position of greater isolation gave them the confidence begotten of a sense of greater security; they felt that they breathed the refreshing atmosphere of a wider independence, and were less subjected to the force of external considerations.

Moreover, the ceding of authority by treaty was an innovation dangerous in its novelty to a people who had known no method of acquiring or foregoing rights so effectual as conquest, and, confident in their own strength to maintain their position by the older method, they were less disposed to dabble in the subtleties of negotiation. With war and its consequences they were perfectly familiar. Diplomacy they did not understand so well; and when to the uncertainty of the procedure was added the supposed indignity of being asked to treat with a Queen, the haughty spirit of Te Heuheu rebelled against such a demeaning suggestion. To submit himself to the superior authority of a chief of his own aristocratic lineage would have been indignity enough, but to come under the dominion of a woman was beyond the limits of toleration.

In due course a messenger reached the *pa* with the intelligence that the Missionaries at Rotorua had received a copy of the treaty, whereupon Te Heuheu set off with five hundred picked men, prepared to resist to the uttermost should an attempt be made to compel his submission to the Queen. On reaching the Papai-o-Uru *pa* at Ohinemutu, the discussion began, after the ceremonial of welcoming the strangers had been concluded. The copy of the treaty which the Arawas were being invited to sign, had been entrusted to Messrs. Morgan and Chapman, the Church Missionaries, and to them Te Amohau and Te Haupapa addressed themselves on behalf of their tribe: "The Arawa people have nothing to say in regard to your

object. The Arawa will await the word of Te Heuheu Tukino, and will abide by what he says to you."

Te Heuheu arose with stately grace, and repeated an ancient chant, revered amongst the sacred *karakia* of the Maori, and known as *Hiremai*. He repeated it to the end, all ears being strained to detect an error, the commitment of which would have boded evil, but he went on faultless to the finish. Leaping to their feet his warriors then indulged in mock passages-at-arms, and when this form of revelry had ended the great chief delivered his judgment upon the treaty: "*Hau wahine e hoki i te hau o Tawhaki.* I will never consent to the *mana* of a woman resting upon these islands. I myself will be a chief of these isles; therefore, begone! Heed this, O ye Arawa. Here is your line of action, the line for the Arawa canoe. Do not consent, or we will become slaves for this woman, Queen Victoria."

Te Pukuatua then rose and gave the final answer for his tribe: "Listen, O Parore, you and your *Pakeha* companions. The Arawa have nothing to add to the words of Te Heuheu. His words denying the *mana* of the Queen are also our words. As he is not willing to write his name upon your treaty, neither will the chiefs of the Arawa come forward to sign."

Then turning to Te Heuheu he added: "Hear me, O Heu. The Arawas have nothing to say, for you are the person of the Arawa canoe."

The blankets given to Iwikau, at Waitangi, were returned to the Missionaries by Te Heuheu, with the remark: "I am not willing that your blankets should be received as payment for my head and these Islands," and with this embargo put upon their operations, the agents of the Lieutenant-Governor were unable to secure a single Arawa signature to the treaty.

The fiat of Te Heuheu went even far beyond the steaming waters of Rotorua, for at Tauranga upon the coast there lived Tupaea, a chief of the Ngai-te-Rangi, whom because of his influence the Missionaries were particularly anxious to enlist as a subject of the Queen.

He too hung upon the words of Te Heuheu, and when he was approached he made answer thus: "What did Te Heuheu say to you at Rotorua?"

The reply was: "Te Heuheu did not consent."

"And what of the Arawa chiefs?" asked Tupaea.

"They followed the word of Te Heuheu," replied the Missionaries.

"Then," said Tupaea, "I will not agree to the chiefs of Ngai-te-Rangi signing the treaty of Waitangi," a decision from which neither he nor his people could ever be induced to depart.[1]

In the meantime the *Herald* had left the Auckland waters, and made her way to the south, arriving off Banks's Peninsula during the night of the 24th. Calms and storms alternately intercepted her progress, and it was not until the 28th that Major Bunbury was able to disembark at Akaroa, accompanied by Mr. Edward Williams and Captain Stewart, whose personal acquaintance with the Southern chiefs and their altered dialect[2] was destined to be of great service in promoting a common understanding.

At Akaroa they found a native *pa* in which lived a remnant of the Ngai-Tahu people, broken by the last raid of Te Rauparaha, a whaling station, and a cattle run,[3] established by a Captain Lethart, who had arrived from Sydney as recently as the previous November. The visitors were more favourably impressed with the condition

[1] Major Bunbury left eight blankets with Mr. Stack for distribution amongst future signatories, but the Missionary mentions in a subsequent letter: "Several more may be wanting if Tupaea and his friends sign." Tupaea would not sign, either when approached by Mr. Stack, or later when he paid a visit to Manakau. The above discussion explains why.

[2] The dialect spoken by the natives of the South Island of New Zealand differs in some important respects from that spoken in the North Island.

[3] Major Bunbury was so impressed with the fertile appearance of Banks's Peninsula that he recommended it be surveyed as soon as possible and thrown open for settlement in allotments of convenient size, in order to put a stop to the "preposterous claims" which were being urged by the Sydney land speculators. Most of these claims of "doubtful origin" originated in sales contracted with Taiaroa, the Otago chief, who had an equally "doubtful" right to sell. Taiaroa went to Sydney in the *Dublin Packet* in 1839.

of Lethart's cattle than with the appearance of the natives, who were so dejected by their misfortunes as to consider themselves almost destitute of rights and without a name. The signature of Iwikau, a brother of Tamiaharanui, the chief who was conveyed captive by Te Rauparaha in the blood-stained *Elizabeth*, was obtained, as well as that of John Love, another native less highly born, but more richly endowed with intelligence. These two signatures Major Bunbury conceived to be of considerable consequence to his purpose, although from the diminished number of the tribe the men themselves scarcely laid claim to the rank of chief.

Southward the frigate again sailed, and on June 4 cast anchor in Zephyr Bay, a beautiful inlet at Southern Port, Stewart's Island. Accompanied by Captain Stewart, who was now in latitudes peculiarly his own, Major Bunbury landed next morning, and set out to visit a station in the harbour, distant four or five miles, where for some time Stewart had employed a number of boat-builders, and who, it was hoped, might still be there. Vestiges of their former residence were found but that was all. Their camp was deserted, their industry abandoned, and no sound broke the stillness of the primeval forest save the flick of a bird's wing, or the screech of the brightly plumaged parrakeet.

Several excursions were made to other parts of the island, but no natives were met with, either upon the shores of the sheltered coves, or within the generous shade of the bush, and Major Bunbury returned to the ship for the first time without having added a signature as a trophy in the cause of the Queen's sovereignty.

Aided by his own experience, and fortified by the local knowledge of Captain Stewart, Major Bunbury concluded that the prospect of meeting with any chief in the apparently deserted island was so slight as not to warrant the delay involved in the search. He therefore consulted with Captain Nias, and together they agreed that it would be advisable to proclaim without protraction the Queen's authority over a territory that had impressed them both

as being singularly beautiful.[1] For this purpose, during the afternoon of the day after arrival, the marines were landed with a party of officers from the ship which had now been moved into Sylvan Bay. Here upon the apex of a small island which becomes a peninsula at low water, the ceremonial forms usual to such occasions were duly observed. The Union Jack was hoisted by Captain Nias and saluted by the marines. A salute was also fired from the guns of the *Herald*, and after the following declaration had been read by Major Bunbury to the assembled sailors, Stewart's Island became an outpost of the Empire.

DECLARATION OF SOVEREIGNTY OF THE QUEEN OF ENGLAND OVER STEWART'S ISLAND

The Island called Stewart's Island, New Zealand, situated between the meridian 167° and 168° east of Greenwich, and 46° and 48° south parallel, with all the Bays, Rivers, Harbours, Creeks, etc., in and on the islands lying off, were taken possession of in the name and in the right (by the discovery of the late lamented Captain Cook) for Her Most Excellent Majesty Victoria, Queen of the United Kingdom and Ireland, and Her Majesty's colours were accordingly hoisted at Sylvan Bay, Southern Port, on the 5th day of June 1840, by Captain Joseph Nias, commanding Her Majesty's ship *Herald*, with a detachment of Royal Marines, and by Major Thomas Bunbury, K.T.S., 80th Regiment, who were commissioned for that purpose.

Done in the presence of us:

Peter Fisher, Lieutenant, H.M.S. *Herald*; C. Hewitt, Lieutenant, Royal Marines, H.M.S. *Herald*; James Giles, Purser, H.M.S. *Herald*; J. H. Shairp, Mate, H.M.S. *Herald*; William Kelly, Gunner, H.M.S. *Herald*; John Caseley, Boatswain, H.M.S. *Herald*; Fred. S. Grey, Volunteer, H.M.S. *Herald*.

Witnesses.—Joseph Nias, Captain; Thomas Bunbury, Major 80th Regiment (charged with a diplomatic Mission).

On the island eminence, where the sovereignty of the Queen had been declared, the original of this document was

[1] In some excursions I made I was much pleased with the fertile appearance of this beautiful island, and although the winter was so far advanced it was not so cold as I had anticipated from its being so far south. Indeed the number of parrakeets seen flying about give it rather the appearance of a tropical island. . . . The soil appears in general good, with plenty of timber. There are several varieties of pine. All the trees, however, appear to be evergreens."—Major Bunbury's *Despatch*.

buried, enclosed in a bottle—a silent witness to be produced in the contingency of international complications, which were then believed to be by no means remote.

For three days the *Herald* lay weather-bound, but on Tuesday the 9th the wind shifted to a more favourable quarter, enabling her to leave her anchorage in Sylvan Bay and move over to Ruapuke Island, the home of the greatest of all the Ngati-Tahu chiefs, Tu Hawaiki, more widely known as "Bloody Jack."[1] On nearing the land a boat manned by some natives and Europeans came off, and a Mr. Hesketh boarded the *Herald* and explained that they had been expecting her arrival for some time. He represented himself as the resident agent of Jones & Co., of Sydney, and being on intimate business relations with Tu Hawaiki volunteered to go ashore and bring him off that evening, leaving an English seaman, formerly in the employ of Captain Stewart, to pilot the frigate to an anchorage. Here she lay in proximity to a French and a Portuguese whaler, neither of which had enjoyed a successful season:

> The native village, being at some distance from an anchorage ground Mr. Hesketh did not return until late in the evening. The chief Tooiaki (Tu Hawaiki) came on board in the full dress staff uniform[2] of a British aide-de-camp, with gold lace trousers, cocked hat and plume, in which he looked extremely well, and his behaviour at Captain Nias's table, when he took tea, showed that the examples he had seen had not been lost upon him. He was also accompanied by a native orderly-sergeant dressed in a corresponding costume. The chief spoke a little English, and appeared to be aware of the nature of the treaty, but which I thought it necessary to have read and explained to him in the presence of Mr. Hesketh, and he signed it without hesitation.[3]

[1] Major Bunbury mentions that by this time he had become ashamed of this sobriquet, which was given to him by the whalers, and disowned it, preferring to be called by his native name.

[2] Tu Hawaiki had only returned in the previous month of March from Sydney, where he had been presented with these uniforms by Sir George Gipps. Shortly after this chief's repulse of Te Rauparaha at Lake Grassmere, on the coast of Marlborough, he boarded a British man-of-war, and on being asked who he was, proudly replied: "Me all the same the Duke of Wellington, Te Rauparaha all the same Napoleon."

[3] Another chief named Taiaroa is also credited with signing. It is difficult to determine which chief this was, as the great Taiaroa was at Moeraki at the time. Possibly it was one of his sons.

He said he had at his village twenty men dressed and in training as British soldiers, and was very anxious that Captain Nias should permit them to come on board the following morning and see the marines go through the manual and platoon exercise, which he (the Captain) kindly acceded to. The chief then gave me a paper written in English which he wished me to sign and affirm. It was a declaration that the Island of Ruapuke was his property and that of his tribe, to different individuals to whom he had allotted portions of it. Not wishing that he should conceive that any deception was intended on our part I wrote on the back of the document, " I have seen this paper but am not prepared to give an opinion, or any information on the purport of it. The treaty guarantees the full and exclusive possession of their lands and other properties to the natives." No mention having been made in this document to the title to the Middle Island, although this chief styles himself the principal, I am inclined to suppose it is claimed by some Europeans, I believe by a Mr. Weller, of Sydney. On the chief taking leave, I told him I would return his visit on the morrow, which I accordingly did, accompanied by Lieutenant Hewitt, Royal Marines, and Captain Stewart, to whom the chief was known, Mr. Williams, and an officer from the ship in charge of the boats.

After being carried through the surf by some natives, we were received by the chief in the same scarlet uniform he had worn the day before, and by the sergeant who then accompanied him, at the head of six soldiers dressed in British uniforms, without hats or shoes. The chief took us to his cottage, a weatherboard hut, and offered us rum, of which he appeared to have a good supply, but Mr. Hesketh, to their credit, states that although they are not absolutely temperance men, they seldom get drunk. I was afterwards introduced to his son, a fine boy of about seven years of age, of whom he appears justly proud. The child was dressed in a very becoming manner, and has six toes on each of his feet, which his father seemed to exhibit with much satisfaction. Rauparaha, who is a great warrior, and the mortal enemy of this tribe, is similarly gifted with this unusual addition to his feet. I also received from him a memorandum respecting the register of a small craft between 25 and 30 tons, building at Mauraki (Moeraki), which paper I beg herewith to forward.

I was very sorry to learn from the chief that a British subject, named M'Gregor, who had been residing some years in this neighbourhood, had suddenly disappeared with a small craft, taking with him some of this chief's women and *kookis* (slaves). The vessel is without a name or register, and Captain Nias is in hopes we may be able to meet with her. M'Gregor is reported to be a convict escaped from Van Dieman's Land, and his conduct made the English residing here for some time apprehensive that the chief might retaliate on them and insist on a compensation.

An Englishman, a carpenter residing at Otakou (Otago) I hear has been shot by a native when in a state of intoxication, but whether in connection with the above affair or otherwise, I could not satisfactorily ascertain.

Knowing that Captain Nias was anxious to proceed on his voyage, we were obliged to shorten our visit. The chief and his son came off with us, and the sergeant and six of his soldiers, with two other chiefs, came off in two whale boats, a third following with natives bringing potatoes, etc., to the ship. The soldiers of the chief and natives having arranged themselves on deck, the Marines went through the manual and platoon exercise, as had been promised, and afterwards, at my request, Captain Nias permitted a few sailors to go through the sword exercise, which, as I had anticipated, pleased and interested them very much, particularly the "attack" and "defence," the chief frequently calling to his followers to pay attention and see how it was performed.

Whilst the ship was getting under way they took their departure, two other chiefs [1] having also been permitted to sign at the request of Tooiaki (Tu Hawaiki). This influential chief is one of the individuals, who (similarly with Rauparaha in Cook Strait) have had sufficient address to gain the ascendency over the chiefs of the neighbouring tribes, without any claim from circumstance of birth.

Such is Major Bunbury's own account of his historic meeting with this singular native, whom he left upon his lonely island in the midst of a windy strait struggling between his native barbarism and an inarticulate craving for civilisation. On the 13th the *Herald* reached the Otago Heads, but so late in the evening that there was only time to obtain the signatures of two chiefs who resided near the entrance of the harbour.[2] Taiaroa was absent at Moeraki, and his son was so far inaccessible that the limits of daylight would not permit of his being reached. The boat, therefore, returned to the ship, and on June 16 she dropped anchor in Cloudy Bay, then the most important centre of European activity in the South Island.

Seven whalers were lying at anchor when the *Herald* arrived, and the strange admixture of humanity—the

[1] These were Kaikoura and Taiaroa. The identity of this Taiaroa is not clear.

[2] There were two American and two French whalers at the anchorage here at the time.

venturesome, quarrelsome, quasi-criminal collection—which went to make up a whaling community was forcibly impressed upon Major Bunbury when he landed at Guard's Cove in the evening. The only chief of importance whom he met was old Nohorua, the elder brother of Te Rauparaha, who had with him three younger men, his nephews. Their reception of the Major was cordial enough, but when the subject of the treaty was broached to them they resolutely declined to attach their signatures to it, or to countenance it in any way. This attitude was adopted under the distinct impression that if they signed the document their lands would be taken from them, and considering that their only experience of deeds had been with the Sydney land sharks [1] the reservation was, to put it mildly, a natural one.

Not having been successful in securing the immediate concurrence of Nohorua, Major Bunbury left him in the hope that he would fulfil his reluctant promise to visit the ship on the following day, by which time he would have had the opportunity—dear to every Maori—of holding a *korero* upon the novel suggestion. Early next morning the Major, Mr. Williams, and Captain Stewart set off for one of the neighbouring coves, and here they met with greater success, the chiefs signing without any hesitation when the principles of the treaty had been explained to them. Amongst the various natives whom they encountered was a young chief whom Major Bunbury has called Maui Pu, who, having visited Hobart Town in the war-ship *Conway*, had sufficient command of English to converse freely with the Europeans. His sympathies were at once enlisted in support of the treaty, and when the difficulties met with at Guard's Cove were mentioned he expressed no surprise, as the natives had no conception of a deed that did not mean the sacrifice of their land. He, however, offered to go with them and assist at the

[1] Major Bunbury mentions that some of these speculators had already sent a number of cattle over, but the natives resisted the occupation of their alleged purchases, and the persons who were placed in charge of the cattle "find themselves in rather an awkward predicament."

second interview with Nohorua, and so adroitly did he explain the purport of the second Article that the old chief's objections were at length so far overcome that he agreed to sign provided his signature was witnessed by his European son-in-law, Joseph Toms,[1] a whaler who had interests both here and at Porirua.

Though there is no definite information on the point, it is probable that Toms had added his persuasion to those of Maui Pu, as Nohorua's reason for insisting upon the above stipulation discloses the justice of his mind and his desire to fix the responsibility beyond any chance of evasion: "If my grandchildren lose their land, their father must share the blame." The three younger men having no son-in-law on whom to shift the responsibility still postponed the important step until they were aboard the ship.

On returning to the *Herald* there was a considerable gathering of chiefs awaiting the treaty party, and with the exception of Nohorua's nephews all expressed their willingness to subscribe to the terms of the compact. Not so these young gentlemen, who still held aloof. For their reservation, however, the wife of one of them was anxious to compensate, by demanding the privilege of signing the treaty. She claimed to be the daughter of the great Te Pehi, who was caught in his own trap at Kaiapoi in 1829, and when Major Bunbury politely but firmly declined to permit her the honour, she gave way to a fit of anger, and in a torrent of invective expressed her opinions concerning the *Pakeha* in general, and Major Bunbury in particular, with a freedom that would have been painful had all her observations been clearly understood.

As an evidence of the persistency with which these people had been harassed about their lands, and the jealousy with which they sought to preserve this class of property, it was noted that they all firmly declined to receive the presents [2] which it had now become customary

[1] Popularly known amongst the whalers as "Jordy Bolts."

[2] Major Bunbury mentions the eagerness manifested by the natives of Cloudy Bay for spelling-books and Testaments. On the table in his cabin was lying a Testament printed in the native language which

to offer, lest by some quibble it might be construed into a payment for its surrender, and in this attitude they persisted until they had been repeatedly assured to the contrary.

The Rev. Henry Williams having visited Queen Charlotte Sound during the course of his Southern Mission and secured the signatures of the chiefs there, Cloudy Bay thus became the last port in the Middle Island at which the *Herald* could profitably call. Under these circumstances Major Bunbury consulted with Captain Nias, and they were agreed that it would be advisable to at once proclaim the Queen's authority over the Island as the most effectual means of preventing further dissensions amongst the natives and Europeans.

This resolution was not hurriedly arrived at, for although many important signatures had now been obtained the whole position was so hedged about with intricately interwoven interests that Major Bunbury felt it was something akin to cutting the Gordian knot to take the contemplated step without further consulting the Lieutenant-Governor. Yet view the matter as he would, there appeared no simpler way, for there was every reason to believe that delay would only breed new difficulties, by suspending the establishment of political authority, and by affording other powers time to develop their embryonic claims. The presence, too, of so many vessels at anchor in the harbour seemed to lend opportunity to the occasion, for with their co-operation it was possible to render the declaration of Her Majesty's sovereignty more solemn and imposing, and where it was desired to impress the native mind Major Bunbury realised the advantage of pressing to his service the assistance of this additional theatrical touch.

The decision come to by the Major and Captain Nias was conveyed to the natives while they were still on board, and whether or not they were seized of all that the ceremony

had been given to him by Bishop Broughton. This was seen by some of the Maoris visiting the ship, who importuned him for it, with the result, he feared, that his refusal gave serious offence.

involved, they entered with considerable enthusiasm into the spirit of the occasion.

In order to invest the intended declaration with becoming dignity the marines were landed on the little island on which was situated the Horahora-kakahu *pa*. There a temporary flagstaff was erected and standing at the foot of it at 2 P.M. Major Bunbury read to the assembled people the following Declaration of Sovereignty.

DECLARATION OF SOVEREIGNTY OVER TAVAI POENAMMOO (TE WAI-POUNAMU)

This Island called Tavai Poenammoo (Te Wai-Pounamu), or Middle Island of New Zealand, situate between the meridian 166° and 174° 30′ east of Greenwich, and 40° 30′ and 46° 30′ south parallel, with all the Bays, Rivers, Harbours, Creeks, etc., in and on the Islands lying off, having been ceded in Sovereignty by the several independent native chiefs to Her Most Gracious Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, the said Island was accordingly taken possession of and formally proclaimed, and Her Majesty's colours hoisted at the *pa* of Hoikaka (Horahora-Kakahu), Cloudy Bay, under a salute of 21 guns on the 17th day of June 1840, by Captain Joseph Nias, commanding Her Majesty's ship *Herald*, and by Major Thomas Bunbury, K.T.S., 80th Regiment, who were commissioned for that purpose.

Done in the presence of us :—

Peter Fisher, Lieutenant, H.M.S. *Herald*; P. L. D. Bean, Master, H.M.S. *Herald*; C. J. Parker, Acting Master, H.M.S. *Beagle*; J. H. Shairp, Mate, H.M.S. *Herald*; Thomas Frazer, Surgeon, H.M.S. *Herald*; James Giles, Purser, H.M.S. *Herald*; C. Hewitt, 1st Lieutenant Marines, H.M.S. *Herald*; F. H. Niblett, 2nd Master, H.M.S. *Herald*; G. F. Munro, Assistant Surgeon, H.M.S. *Herald*; Edmund Webber, Midshipman, H.M.S. *Herald*; John B. Catoo, Midshipman, H.M.S. *Herald*; H. R. Crofton, Midshipman, H.M.S. *Herald*; H. W. Comber, Midshipman, H.M.S. *Herald*; Frederick S. Grey, Volunteer, H.M.S. *Herald*; William Kelly, Gunner, H.M.S. *Herald*; John Caseley, Boatswain, H.M.S. *Herald*; J. Chappels, Carpenter, H.M.S. *Herald*.

Witnesses to Signatures.—Joseph Nias, Captain, H.M.S. *Herald*, Thomas Bunbury, Major, 80th Regiment, charged with diplomatic Mission; Edward Marsh Williams, Interpreter.

The reading of the Proclamation done, the Union Jack was run up by Captain Nias, and the guns of the *Herald* began to boom forth the Royal Salute. The yards of the frigate were manned, and the cheers of those grouped round

the flagstaff were answered by those on board the man-of war, the echoes from the surrounding hills being reinforced by the approving shouts of the natives.

The all-important step having now been taken and received with local approbation, the *Herald* weighed anchor and sailed for Kapiti.[1] Two days later (June 19), she arrived under the shadow of Te Rauparaha's home. By a fortunate circumstance the great chief, whom Major Bunbury had special instructions to see, was at that moment entering his canoe, preparatory to making an excursion to the Island of Mana. As the *Herald's* boat was proceeding to the shore the Queen's Commissioner and the chief met mid way, the meeting being of the most cordial nature. Te Rauparaha left his own canoe "in lordly decoration the lordliest far," and returned on board with Major Bunbury in the ship's boat. Here the proceedings of the Rev. Henry Williams were related by the chiefs—how he had explained the treaty, obtained Te Rauparaha's signature, and presented him with the much-prized blanket.

On enquiry being made by Major Bunbury for Te Rangihaeata and Te Hiko, he was informed that both these warriors were at Mana. As this Island lay directly in the route to Port Nicholson, the *Herald* was put about and her course shaped towards the south. Under a fresh wind the vessel was soon abreast of Mana. The chief and Mr. Williams accompanied Major Bunbury on shore, where they found Te Rangihaeata but Te Hiko was absent on an expedition to the mainland.

No record appears to have been preserved of the negotiations which followed between the representative of the Crown and the two leaders of the Ngati-Toa tribe. Major Bunbury contents himself with informing us that "the chief Rangihaeata, after some time, returned with

[1] As the *Herald* left Cloudy Bay, the Kaikouras, clad in their winter snow, loomed up in the distance, and Major Bunbury was deeply impressed with what he calls their "bleak and savage appearance." The Major took his departure from the Middle Island fully convinced that it had been greatly underrated by the authorities both in regard to the fertility of its soil and the intelligence of its natives.

us on board, accompanied by Rauparaha, when both signed the treaty."

The importance of their discussion is, however, somewhat diminished by the fact that the elder chief had already signed the treaty under the persuasions of the Rev. Henry Williams, but their questions, which were certain to have been shrewd and searching, would have been interesting as revealing their mental attitude towards the proposed innovation. There is a widespread impression, founded upon equally widespread prejudice, that both men were thoroughly insincere[1] when they subscribed to the terms of the treaty, and this view is encouraged by the fact that at this time they stood less in need of British protection than any other chiefs of the native race. They were indeed masters of all the territory they claimed. Their immediate enemies had been defeated and crushed, their powerful foes were far distant. There was a gun in the hand of their every warrior, and solidarity in the ranks of their every *hapu*. So situated they had less to gain by ceding their sovereign rights than others had. Neither is it to be supposed that the advantages of their position were not apparent to themselves, for with their gifts of military command, they combined a state-craft that was of quite an exceptional order. If political considerations entered into the transaction at all, it is more than likely that a presentiment of impending trouble with the New Zealand Company was the governing influence in securing their adherence to the policy of the Crown, and in the light of subsequent events their fears were not unfounded—their foresight was almost prophetic.

While on shore at Mana, the protection of Major

[1] Te Rauparaha may have laid himself open to this charge of insincerity by afterwards making light of the fact that he had signed the treaty, and offering to sign again if they gave him another blanket. With Te Rangihaeata it was different. Savage that he was, he had the keenest sense of honour, and he would not have signed the treaty had he not approved it so far as he understood it. His subsequent rebellion was not a protest against the establishment of civil authority so much as it was active resistance towards what he believed to be the unfair if not the dishonest methods of land dealing adopted by the New Zealand Company, in whom he lost all confidence after their attempt to seize the Wairau Valley.

Bunbury was solicited by a section of the whaling population against the alleged encroachments of the Maori chiefs in general and Te Rangihaeata in particular. Though clamorous for justice, they were unable to formulate any specific charges against the chief; and after such investigation as was possible under the circumstances, the Major came to the conclusion that the accusers were a set of "drunken, lawless vagabonds," and that so far from their having any just grounds of complaint against Te Rangihaeata, the chief in all probability would have more reason to feel aggrieved towards them.

The *Herald's* course was now directed to Port Nicholson, and arriving there next day (20th) she anchored inside the Heads, the wind and tide having failed her at a critical moment. Major Bunbury at once left the ship and pulled towards the Thorndon beach, where much to his surprise on landing, he met Mr. Shortland. The presence of Lieutenant Shortland at Port Nicholson at this juncture requires some explanation. Shortly after the departure of Major Bunbury from the Bay of Islands, copies of the *New Zealand Gazette*, a paper published by the colonists at Port Nicholson, reached the Lieutenant-Governor, and from the columns of this journal, as well as from other well-authenticated sources, he learned that the settlers had set up a system of Local Government consisting of a Council, over which Colonel Wakefield presided, and a bench of Magistrates, who were attempting to levy taxes, and to enforce punishments for breaches of laws enacted by their self-constituted authority.[1]

[1] Before the first batch of the Company's emigrants sailed from the Thames, they were induced by the Directors to sign an agreement binding themselves to "submit in all things needful to peace and order until the establishment of a regular Government." This meant that if any of them committed a breach of the law of England, he should be punished according to the law of England. This agreement was brought under the notice of Lord John Russell who challenged the right of the Company to enforce such a provision. The Company took the opinion of Serjeant Wilde upon the point, and his advice, given on November 14, 1839, was that (1) the parties will not be justified by law in acting under the agreement, (2) that those acting under it were liable to prosecution for so doing, and (3) the agreement should be abandoned.

To this latter tribunal on April 14 came a Mr. Wade, pleading for protection against the violence of Captain Pearson of the brig *Integrity*, his allegation being that this rude seaman had not only assaulted him, but threatened to throw him overboard. The law, such as it was, was immediately set in motion, the Captain was arrested and haled before Major Baker, who held the post of District Magistrate. To his other supposed offences, Pearson now added the more heinous one of refusing to recognise the jurisdiction of the Court. He defied the complainant to proceed with his charge, and dared the Magistrate to convict him. For this exhibition of independence he was immediately committed by the irate Magistrate, who could brook no such contempt for his brief authority.

On hearing of the fate of their Captain, the crew of the *Integrity* flew to arms and pulled to the rescue, but the settlers were loyal to the law and repulsed them. In view of this belligerent attitude on the part of his shipmates, it was deemed safer to incarcerate the recalcitrant Captain on board one of the other ships lying in the harbour, whither he was conveyed, but it is said, "owing to the culpable negligence of the constable in charge," he was permitted to escape.

While the authorities were foolishly dreaming that their victim was safely under lock and key, the *Integrity* sailed for the Bay of Islands, where Captain Pearson reported, no doubt with advantages, to the Lieutenant-Governor that the settlers at Port Nicholson were "a turbulent set of rebels who were seeking to establish a republic."

The story of the indignant Captain took Governor Hobson completely by storm, and after satisfying himself by reading the latest copies of the *New Zealand Gazette*[1] that it had some foundation in fact he developed a state of anxiety

[1] "Captain Pearson of the brig *Integrity* was arrested to-day (April 14) under a warrant issued for illegal conduct towards his charterer, Mr. Wade, of Hobart Town, and brought before the District Magistrate, Major Baker. The prisoner refused to recognise the Court, and was accordingly committed. The ensuing day Captain Pearson made his escape, and an escape Warrant has accordingly been issued against him."—Extract from *New Zealand Gazette* (the first newspaper published in the Colony), April 18, 1840.

not far removed from panic. It did not take him long, however, to determine how he should act in the emergency.

In the absence of any legal authority to advise him he rather absurdly interpreted the proceedings of the New Zealand Company as acts of high treason, and within an hour had ordered the officer commanding the troops to detach thirty men of the 80th Regiment for duty at Port Nicholson. He also, two days later, dictated a Proclamation in which he denounced the attempt to supersede the authority of the Queen, and called upon all loyal subjects to resume their allegiance to their lawful sovereign.

PROCLAMATION

WHEREAS certain persons residing at Port Nicholson, New Zealand, part of the Dominions of Her Majesty, Queen Victoria, have formed themselves into an illegal Association, under the title of a Council, and in contempt of Her Majesty's authority, have assumed and attempted to usurp the powers vested in me by Her Majesty's Letters Patent, for the Government of the said Colony, to the manifest injury and detriment of all Her Majesty's liege subjects in New Zealand.

NOW, THEREFORE, I, WILLIAM HOBSON, Lieutenant-Governor of New Zealand, command all persons connected with such illegal Association immediately to withdraw therefrom, and I call upon all persons resident at Port Nicholson, or elsewhere, within the limits of this Government, upon the allegiance they owe to Her Majesty, Queen Victoria, to submit to the proper authorities in New Zealand, legally appointed, and to aid and assist them in the discharge of their respective duties.

GIVEN under my hand at Government House, Russell, Bay of Islands, this 23rd day of May in the year of our Lord 1840.

WILLIAM HOBSON,
Lieutenant-Governor.

By command of His Excellency the Lieutenant-Governor,
WILLOUGHBY SHORTLAND,
Colonial Secretary.

The exigencies of the circumstances were such as seemed to warrant the taking of even a more decisive step than the despatching of troops to Wellington, and without waiting for a report from Major Bunbury as to the success or failure of his mission, two other proclamations were hastily formulated and published, the one taking

possession of the North Island by virtue of its cession by the native chiefs; the other declaring the South Island to be part of the Queen's Dominions by right of discovery.[1]

In order to give effect to the views which he had formed Captain Hobson commissioned Lieutenant Shortland, in whose discretion he placed implicit confidence, to proceed to Port Nicholson, there to personally read the proclamations, and to take such steps as he might deem necessary to secure the due recognition of the Crown at the Southern settlement. Accompanied by the small detachment of troops, and a still smaller force of mounted police, under the command of Lieutenants Smart and Best, the Colonial Secretary reached Port Nicholson in the barque *Integrity* on the evening of Tuesday, June 2. A Mr. Cole[2] one of the civil staff, was immediately sent on shore with copies of the proclamations, and a letter to Colonel Wakefield, telling him it was Mr. Shortland's intention to land next day and read the proclamations, requesting at the same time that he would make all the necessary arrangements.

These dispositions were interfered with by a heavy gale which sprang up during the night, making it impossible to carry out the intended ceremony. In the meantime the Colonial Secretary was waited upon on board the *Integrity* by Dr. Evans, and Messrs. Chaffers and Tod, who came for the purpose of expressing the gratification it gave the settlers to learn of his arrival. They then proceeded to assure Mr. Shortland that their actions and intentions had been greatly misrepresented. Dr. Evans volunteering the information that their Council had been formed for no other purpose than to preserve the peace, and for mutual

[1] The proclamation itself does not make it clear on what grounds Hobson took possession of the "Island." Indeed it is so ambiguously worded that he seems to imply that he claimed it by right of cession. In his despatch to the Secretary for State, however, he made it clear that he intended to claim it "by right of discovery," a course which he had recommended to Lord Normanby before he left England.

[2] "Captain" Cole as he was sometimes called, because he had been sailing in an East Indiaman, had been one of the early Wellington settlers, having come out in the *Aurora*. On the arrival of Captain Hobson he removed to the Bay of Islands, and had succeeded in getting himself appointed chief constable at Port Nicholson, in which capacity he now appeared in the Southern settlement.

protection until either the Lieutenant-Governor or some duly accredited representative of the Crown should arrive in their midst.

These assurances Mr. Shortland indicated he was prepared to accept, conditionally upon their being followed by some practical evidence of their sincerity. He told them plainly that the Council must disappear, that the flags flown as the insignia of its authority must come down, and that any proposal from any body of persons assuming any power or rights would be regarded by him as an act of hostility. To these conditions the deputation agreed and withdrew, after again protesting the loyalty of the colonists.

The storm having abated, Lieutenant Shortland landed on the beach at Thorndon at 2 o'clock on the afternoon of Thursday June 4, accompanied by Lieutenants Smart and Best and the four members of the police force. They were received on the beach by Colonel Wakefield, Dr. Evans, Captain Smith, R.A., and all the principal settlers, who conducted them to the appointed place of ceremony. Here the Colonial Secretary read the proclamations, which he assures us " were responded to by three hearty cheers; a royal salute from the Europeans, and with a war dance and general discharge of musketry by the natives who had assembled in great numbers."

PROCLAMATION

In the name of Her Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland. By William Hobson, Esq., a Captain in the Royal Navy, Lieutenant-Governor of New Zealand.

WHEREAS by a treaty bearing date the 5th day of February in the year of our Lord 1840, made and executed by me William Hobson, a Captain in the Royal Navy, Consul and Lieutenant-Governor in New Zealand, vested for this purpose with full powers by Her Britannic Majesty, of the one part, and the chiefs of the confederation of the United tribes of New Zealand, and the separate and independent chiefs of New Zealand, not members of the confederation, of the other, and further ratified and confirmed by the adherence of the principal chiefs of this Island of New Zealand, commonly called " The Northern Island," all

rights and powers of Sovereignty over the said Northern Island were ceded to Her Majesty the Queen of Great Britain and Ireland, absolutely and without reservation.

NOW, THEREFORE, I, William Hobson, Lieutenant-Governor of New Zealand, in the name and on behalf of Her Majesty, do hereby proclaim and declare to all men, that from and after the date of the above-mentioned treaty, the full sovereignty of the Northern Island of New Zealand vests in Her Majesty Queen Victoria, her heirs and successors for ever.

GIVEN under my hand at Government House, Russell, Bay of Islands, this 21st day of May in the year of our Lord 1840.

WILLIAM HOBSON,
Lieutenant-Governor.

By His Excellency's command,
WILLOUGHBY SHORTLAND,
Colonial Secretary.

PROCLAMATION

In the name of Her Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland. By William Hobson, Esq., a Captain in the Royal Navy, Lieutenant-Governor of[1] New Zealand.

WHEREAS I have it in command from Her Majesty Queen Victoria, through her principal Secretary of State for the Colonies, to assert the Sovereign rights of Her Majesty over the Southern Islands of New Zealand, commonly called "The Middle Island" and "Stewart's Island," and also the Island commonly called "The Northern Island," the same having been ceded in Sovereignty to Her Majesty.

NOW, THEREFORE, I, WILLIAM HOBSON, Lieutenant-Governor of New Zealand, do hereby proclaim and declare to all men, that from and after the date of these presents the full sovereignty of the Islands of New Zealand extending from 34° 30′ north[2] to 47° 10′ south latitude, and between 166° 5′ to 179° of east longitude, vests in Her Majesty Queen Victoria, her heirs and successors for ever.

---

[1] As sovereignty over only a small portion of the Colony had at this time been ceded to the Queen, Hobson was claiming a wider jurisdiction than he was entitled to in describing himself as "Lieutenant-Governor *of* New Zealand." He was only Lieutenant-Governor *in* New Zealand.

[2] This also was a mistake. It should have been South, not North. On this error Sir George Grey once based the argument that New Zealand included New Guinea, and was entitled to claim control over it. The error was corrected and the boundaries so amended as to include the Chatham Islands.—Vide Letters Patent issued to Captain Hobson, April 4, 1842.

GIVEN under my hand at Government House, Russell, Bay of Islands, this 21st day of May in the year of our Lord 1840.

WILLIAM HOBSON,
Lieutenant-Governor.

By His Excellency's command,
WILLOUGHBY SHORTLAND,
Colonial Secretary.

As the last sounds of the rejoicing died away the leaders of the Settlement again pressed upon the Colonial Secretary their protestations of loyalty, and reiterated their assurances that in appearing to assume authority over the community they had been actuated by no other motive than a desire to preserve the peace and to protect their property. Under these circumstances the Colonial Secretary was able to write to Captain Hobson on June 20, " I have great pleasure in informing your Excellency that Her Majesty's Government is now fully established, and that both European and native populations are in a very satisfactory state."

Matters were in this position when Major Bunbury landed at Port Nicholson. He confirmed the harmonious nature of the relations between *Pakeha* and Maori in an interview he held with some native chiefs, and subsequently with Captain Smith, R.A., Surveyor-General to the Company. This gentleman expressed himself as being much annoyed at the exaggerated accounts which had been spread regarding the condition of the settlement,[1] and the disloyalty of the settlers, whom he averred had received the Colonial Secretary[2] with the most spontaneous cordiality, the feminine section of the community being equally enthusiastic in acclaiming the substitution of the British flag for that of the Company. These protestations must be received and accepted for whatever weight they may bear. It is a fact too well known to again require substantiation, that the intervention of the British Govern-

[1] It had been reported that the settlers were starving, which was quite untrue.

[2] While H.M.S. *Britomart* (Captain Stanley) was returning from her historic visit to Bank's Peninsula she put in to Port Nicholson and took Mr. Shortland on board, leaving Mr. Murphy to supply his place as the representative of the Government at the Southern settlement.

HORAHORA-KAKAHU ISLAND.

Where sovereignty was declared over the South Island.

UNIV. OF
CALIFORNIA

ment at this juncture was a grievous blow to the promoters of the New Zealand Company, and that whatever the feelings of the populace may have been, the leaders were never in a mood to express jubilation at the authority of the Crown thus unceremoniously overriding their own.

It is at least significant that the *New Zealand Gazette*, the organ of the Company, in its issue of June 6, is content with making the most meagre mention of the fact that Lieutenant Shortland had landed at Thorndon and read the Governor's proclamations. There is no enthusiasm, no shouts of acclamation described there, while the editorial is sullen in temper, and ill conceals the barb of disappointment, or the touch of sarcasm in its congratulations:

> We congratulate our fellow-colonists upon being secured in this part of the world in all the rights of British subjects. All know, of course, that His Excellency has it not in his power either to extend or limit our rights, consequently if we were, so are we now entitled to the representative Government we have sometime enjoyed, though it may be for the present placed in abeyance. Under the British flag and having our representative Government in respect of administration of affairs, we shall be the most favoured Colony in this part of the world. We shall be in a better position even than South Australia, whose constitution is conditional upon having a given amount of population at a particular moment, and the which may be when obtained of a very questionable kind. If deprived of our representative Government, the main good of the proclamations will have been placing us, so far as the benefits of trade are concerned, on a footing with all other British colonies. But with this good we have a large quantity of bitter thrown into the cup. The highest in the scale of rank is a non-subcolony with a representative Government, and free of convicts; the lowest a subcolony to a Crown penal colony; and this is the position in which the free men of New Zealand find themselves placed by a British proclamation. We are dependent on New South Wales, and are therefore lowest in the scale of British colonies—indeed it would be difficult to conceive a lower condition. We are to be legislated for by a convict colony, we are therefore its inferior. New South Wales has Norfolk Island—the accursed of jails—and New Zealand as its dependencies. We place Norfolk Island first, because first subjected to New South Wales. The difference between these dependencies is that the one is now devoted to the convict system and the other is not, but as yet we have no guarantee that this shall not be the cherished abode of

vice and crime. We have congratulated the colonists upon being placed under the British flag, but of course we firmly believe that Lord John Russell will immediately render these Islands independent of New South Wales, and that if we lose our Representative Government for the present, we shall not find ourselves placed upon a less favourable footing than the colonists of South Australia. It must never be forgotten that we have shewn we can govern ourselves, and were proceeding in a quiet, orderly, and successful career when the assertion of British authority took place.

That these sentiments faithfully reflected the views of the leaders at Port Nicholson is scarcely open to question, for the writer was in daily communication with them, and the most cursory perusal of them is all that is needed to establish how much of elation there is in their tone. The fact is the despatch of Captain Hobson to New Zealand, and his subsequent success, brought the keenest mortification to Colonel Wakefield and his colleagues, and after resistance and ridicule had failed to prevent the consummation of the treaty, they adopted an attitude of silent but angry acquiescence in a line of policy which in their hearts they regarded with the utmost malignity.

One thing, and one thing only, made the new position tolerable to them, and that was the prospect of securing to their own settlement the seat of Government. To this end they adopted an address of welcome to Captain Hobson, and despatched Colonel Wakefield to the Bay of Islands to present it. The bait was offered of a hearty welcome and the most valuable sites in the town for the convenience of the public offices. Captain Hobson's failure to accept the bribe only added fuel to the smouldering fires of discontent and served to enhance the difficulties of his already intricate administration—perhaps to shorten his life.

The *Herald* left Port Nicholson just before dusk on Sunday the 21st, beating out of the Heads in the dark against a fresh south-east breeze, with her boats holding lights on the extremities of the outlying reefs for the guidance of the helmsman. Her journey along the coast was uneventful, and on the night of the 23rd she anchored in Hawke's Bay.

On the following morning Major Bunbury landed in search of the chief Te Hapuku, the most influential representative of the Ngati-Kahungunu tribe living on this stretch of coast. By common report this chief had acquired an unenviable reputation for rapacity and extortion towards the Europeans settled at Ahuriri (Napier). For this reason Major Bunbury anticipated some little difficulty in finding him " at home " :

" Nor," says he, " did the tears of some of the women who followed us from one of his residences we found at the bottom of the Bay, make me think more favourably of him. After walking about a mile along the beach, and crossing the sandy isthmus we arrived at an estuary, the road leading round it being only passable at low water. After walking and wading another half hour we arrived at the *pa*, but the chief had gone into the country. A native was, however, sent after him. Here we remained some time, but no chief appearing, we prepared to return, and left a note for him explaining the nature of our mission, with a native who was able to read. Before reaching our boat Te Hapuku overtook us, accompanied by a chief from the Bay of Islands district, named Hara. The chief, Te Hapuku, at first refused to sign the treaty, saying that he was nobody, and that he had heard that those who signed it at the Bay of Islands had been made slaves. I therefore requested Mr. Williams to ask the chief Hara, who was one of those who had signed, how he came not to be made a slave and how many slaves he had seen at that place when he left the Bay of Islands with Mr. Williams' father. He endeavoured then to explain his meaning by a sort of diagram on a piece of board, placing the Queen by herself over the chiefs as these were over the tribes. I told him it was literally as he described it, but not for an evil purpose as they supposed, but to enable her to enforce the execution of justice and good government equally amongst her subjects. Her authority having been already proclaimed over New Zealand with the consent of the greatest number of influential chiefs, he would find that the tribes must no longer go to war with each other, but must subject their differences to her arbitration; strangers and foreigners must no longer be plundered and oppressed by natives or chiefs; nor must the natives be injured or insulted by white men. It was not the object of Her Majesty's Government to lower the chiefs in the estimation of the tribes, and that his signature being now attached to the treaty could only tend to increase his consequence by acknowledging his title. He might, therefore, sign or otherwise as he thought best for his own interests and those of his tribe. To give him greater confidence I told him I regretted it was not in my power to show him the ship, as we had not the

means of relanding his party. I could give him and his party a seat in our gig, but as they did not appear to have any canoes in this part of the Bay I did not know how they were to get back. He then immediately volunteered to go and take his chance of meeting with some canoes alongside the ship, in which he might return.

"A complaint having been made to me by Mr. Ellis, against a native who had taken from him a whaling boat with its oars and sails, on pretence that Ellis had cursed him, and who acknowledged he had been induced so to act from having been prevented from removing some sawyers he had employed, and for an attempt made to make him pay over again five sovereigns and 40 lbs. of tobacco he had paid for the timber. I referred the matter on the spot to Te Hapuku, who acknowledged that the Englishman's statement was correct. He said, however, that the native did not belong to his tribe, but as he had been cursed he wished to know how the native was to be compensated. I told him Ellis had done wrong, but according to our notions, under all the circumstances, the punishment had far exceeded the offence. I should therefore insist upon the boat being returned to him, but as mild measures were always preferable, I begged he would send a native to advise the boat being immediately given up, to prevent the necessity for my employing the ship-of-war, which I otherwise should do. Mr. Parker of the *Herald* and Mr. Williams having volunteered to accompany Mr. Ellis in his boat, I desired the latter, who understood and spoke the native language, to be told by Mr. Williams in their language, that I was determined that justice should be done, not alone to the natives, but to strangers also, and if necessary the *Herald* would interfere. When Mr. Ellis was about to shove off in his boat he returned and told me the observations that had been made had caused such a sensation amongst the natives present that he was confident his boat would be, immediately on his arrival, returned to him, and that he did not consider it would now be necessary to trouble either Mr. Parker or Mr. Williams to accompany him. These gentlemen were accordingly passed into the *Herald's* gig, and accompanied by Te Hapuku, Hara, and some other natives we returned on board. Captain Nias ordered a gun to be fired, at their request, and having signed the treaty and received some blankets and tobacco as a present, they were put on shore at a native village in the Bay, where they would get canoes to convey them to their residence. Mr. Ellis not having returned on board the *Herald* according to an agreement I had made with him on shore, we concluded his boat had been restored to him."

Major Bunbury having now visited all the places of importance from the point of view of native population on the East Coast, the *Herald* once more set her course for the Bay of Islands, reaching port on July 4. Captain

Hobson had so far recovered in health, as to resume the active administration of affairs, and was at the moment of the Major's arrival "absent on a tour of duty." The propaganda of the treaty had prospered to the fullest expectation. Five hundred and twelve[1] signatures had been obtained, embracing almost every man of influence throughout the Islands with the exception of Te Wherowhero of Waikato, Te Heuheu, of Taupo, Te Waharoa, chief of Ngatihaua and Taiaroa, of Otago.

In recognition of this achievement Lord John Russell wrote to Captain Hobson then rapidly approaching his end: "As far as it has been possible to form a judgment, your proceedings appear to have entitled you to the entire approbation of Her Majesty's Government."

In these circumstances we have now reached that stage in our history where we may in words of the chiefs themselves, write: "Now, we, the chiefs of the Assembly of the *hapus* of New Zealand, assembled at Waitangi. We, also, the chiefs of New Zealand, see the meaning of these words. They are taken and consented to altogether by us. Therefore are affixed our names and our marks."

SIGNATURES TO THE TREATY OF WAITANGI

Waitangi, February 6, 1840

KAWITI. The leader with Heke of the rebellion in the North in 1845.

TIRARAU. The principal chief of Northern Wairoa.

POMARE. Was detained on board H.M.S. *North Star* during the Northern war.

KIORE HEKE, of the Matarahurahu tribe.

HORI KINGI, WHAREHAHI. This chief accompanied Hongi to England.

TAMATI PUKUTUTU. Fought with our troops against Kawiti, at Ruapekapeka.

HAKIRO. Son of Tareha.

WIKITENE (HIKITENE). Chief of Kapotai of Waikare.

PUMUKA. Was killed by Captain Robertson of H.M.S. *Hazzard* at the sack of Kororareka.

MARUPO. A noted warrior. Conquered Ngatimaru and Ngatipaoa.

TE TAO.

REWITI ATUAHAERE. An uncle of Hone Heke.

WIREMU HAU. Afterwards a native assessor. Fought for the British at Ohaeawai.

[1] This number was subsequently increased to 546.

KAUA.
TONA.
MENE.
TAMATI WAAKA NENE. The celebrated loyal chief of Ngapuhi.
MATU HUKA.
KAMERA (KAITEKE).
WARAU.
NGERE.
PATUONE ERUERA MAIHI. Brother of Tamati Waaka Nene.
PAORA NOHOMATANGI.
RUHE. Father of Maketu, who was the first Maori hung for murder in New Zealand. Ruhe shot himself in 1865.
KAITARA WIREMU KINGI.
TAURA. Killed at Mawhekairangi.
TAURAU. The younger brother of Te Tirarau.
TE ROHA. The younger brother of Te Tirarau.
REWA. Father of Huirau.
MOKA. A celebrated chief in the early days of the colony.
PAPAHIA. Chief of the Hokianga tribes. Father of Wi Tana.
TAKIRI (TITORE NUI, the Great). First commenced the felling of Kauri spars for the navy.
TAKO.
WIREMU TANA. Son of Papahia.
TANGATA KOTAHI. Son of Papahia.
TE TAI. Son of Papahia.
TOROIHUA.
TE KEHA.
KOWAO.
TAKURUA.
HINAKI.
MANUTA WUNU.
NGA MANU (HAUTOKIA).
HIRO.
MARAMA.
MOE NGAHEREHERE.
MAHU.
WIREMU WUNA.
TAWAKWAE.
WHAREUMU. Killed at Waima.
MAKOWARE.
TE AHU. Son of Parore of Ngapuhi.
TUKUPUNGA.
HARA.
HAKITARA. Went to England to see King William IV.
HAWAITU (TAMATI).
MATATAHI.
RAWIRI TAIWHANGA. Father of Hirini (Sydney) and Hemi. A very intelligent man.
PARAARA.
ANA HAMU.
HIRA PURE.
IWI. Ngatirangi tribe, Te Waka.
WHIORAU.
WIREMU WAHTIPU.
PIRIPI HAURANGI.
POKAI. Ngatirangi tribe. The celebrated Hone Heke. Leader of the rebellion of 1845.
KAUWHATA. Ngatiwai tribe.
TUIRANGI. Matarahurahu tribe.
HOHEPA KINGI RAUMATI.
TAWAKAWAHA. Ngaitawake tribe.
TAWATANUI.
RAWHITI.
KUIHANGA (MAIHI PARAONE KAWITI).
PARAKA.
TAHUA HORI KINGI.
PUKA.
KOROIKO (TE KOROHIKO). A chief from Taupo.
IWIKAU HEUHEU. Younger brother of the great Te Heuheu, of Taupo. He afterwards became an ardent Kingite.

Witnesses.—James Busby; Henry Williams; Richard Taylor, M.A.; John Mason, of the Church Missionary Society; Samuel Ironside, Wesleyan Missionary Society; James Stuart Freeman, gentleman. Witness to the signature of Pomare—James R. Clendon.

February 9, 1840

REWITI IRIKOE.
TE KUTA.
PAORA KINGI (?). Patu Matekoraha.
HAUPOKIA AHUAHU. A celebrated chief and priest. He was wounded in three places during the Northern war: twice through the chest.
MOHI TAHUA.
KAME KUTU.
RANGI TUTURAU.

Witnesses.—Joseph Nias, Captain H.M.S. *Herald*; Henry Williams, clerk.

Hokianga, February 13, 1840

HAKE.
REWIRI.
TE PANA.
HONE MAKINAIHUNGA.
PANGARI.
RANGATIRA PAKANAE (RANGATIRA MOETARA).
TIO.
TE KAREKARE.
TUKARAWA.
PAKA.
WHAREKORERO.
MARUPO. Ngatikorokoro tribe.
TOTO.
TOKO.
PO.
PIRIPI NGAROMUTU.
WIREMU RAURAKA.
WIREMU PATENE. Son of Otene Pura.
MANAIHI.
PARATENE (TE RIPI).
TE HIRA.
TURAU.
TE KETI.
KENANA.
PERO.
TE URUTI.
WITIKAMA
TIRA.
TIPANE.
MATIU.
KAIHU.
KAITOKE (TE WHAKAWAI).
HIRA.
KIRI KOTIRIA.

Witnesses.—Joseph Nias, Captain H.M.S. *Herald*; Willoughby Shortland; George Clarke, Church Missionary Society; William Woon, Wesleyan Mission Society; G. P. Russell, Kohukohu.

Waimate, February 15, 1840

TAMATI HAPIMANA.
TE KEKEAO PARATENE.
TAONUI MAKOARE.
DANIEL KAHIKA.
ABRAHAM TAUTORU (APERAHAMA TAONUI).
KAITOKE MURIWAI.
TE NAIHI.
TAHUA.
TUKU.
NGARO.
RAWIRI MUTU.
WIREMU WAHNGAROA.
TIMOTI TAKARE.
HAMIORA MATANGI.
ARAMA HONGI.

HAIMONA TAURANGA.
TE KURA.
HEREMAIA.
PI, TE MAHUREHURE. Of the Waima tribe. Killed at Otuihu. Father of Arama Karaka.
REPA MANGO.
MAUNGA RONGO.
WIRE MANU.
TAKAHOREA.
WAKANAU.
MOHI TAWHAI. A loyal chief who fought for us at Ohaewai.
TIMOTI MITO.
HAIMONA PAIKORAHA.
HUNA TUHEKA. Ngatipakau.
PERO.
WIREMU KINGI.

Witness.—Richard Taylor, Church Missionary Society.

Waitemata, March 4, 1840

WIREMU HOETE. Chief of Ngatimaru.
HAKOPA.
TE AWA. Father of Te Hira.
TAPURU.
TITAHA. Killed by Heke at the battle of Ohaeawai.
KAHUKOTI.
RUINGA. Hori Pokai.
HOHEPA.
POUROTO.
ENOKA.
HINAKI.
KEPA.
PAORA (PUTU).
MOHI TE AHI-A-TE-NGU.
ANARU.
WAITANGI, of Paroa.
WILLIAM KOROKORO. Chief of Ngatiwai.

Witnesses.—Joseph Nias, Captain H.M.S. *Herald*; Henry Williams; William Thomas Fairburn.

Kaitaia, April 29, 1840

NOPERA PANAKAREAO. Died April 1856 of erysipelas.
PAORA NGARUE.
WIREMU WIRIHANA.
UMU.
HIMIONA TANGATA. Died in 1860.
MATENGA PAERATA. Died in 1862.
RAPATA WAKAHOTU.
HORI POPATA WAKA. Died in 1862.
TAUA.
TAITIMU.
MATIU HUHU.
TOKITAHI.
PARATENE WAIORA.
RAPITI REHUREHU.
KORONEHO PUPU.
PIRIPI RAORAO.
KOPA.
MEINATA HONGI.
OTOPI.
PAETAI.
MARAMA.
PARATENE KARUHURI.
TAMATI PAWAU.
REIHANA TEIRA MANGONUI.
WATENE PATONGA.
WIREMU NGARAE.
HOHEPA POUTAMA.
HARE MATENGA KAWA. Died in 1862.
KINGI KOHURU.
MATIU TAUHARA.
HAMIORA POTAKA.
HUYATAHI (HETARAKA).
MARAKAI MAWAI.
UTIKA HU.
HARE HURU.

Tamati Mutawa.
Hauora.
Tomo.
Puhipi Te Ripa. Afterwards a native assessor.
Ereonora. Wife of Nopera Panakareao. She died in 1847.
Poari Te Mahanga.
Rawiri.
Kepa Waha.
Koroniria Nua.
Ngare (Riwai Haki Ngare).
Hamiora Tawari.
Whiti. Chief of Awanui.
Ruanui.
Haunui. Died in 1862.
Kuri.
Kawariki.
Rawiri Awarua.
Ru. Died in 1862 of typhoid fever.
Papanui.
Hakaraia Kohanga.
Kawaheitiki.
Pere Kamukamu.
Karaka Kawau. Afterwards a native assessor.
Paora Te Hoi. Died in 1862 of typhoid.
Himiona Wharaora.
Aperahama Otiru.
Tara.
Pihere, from Kawakawa. Ngatimanu tribe.

Witnesses.—William Gilbert Puckey, Church Missionary Society; John Johnson, M.D.; H. D. Smart, 28th Regiment, New Zealand Mounted Police; Richard Taylor, M.A., Church Missionary Society; Willoughby Shortland, Colonial Secretary.

THAMES NATIVES FROM WHAREKAWA

Tamaki, July 9, 1840

Te Ara Karamu. Ngahuka. Raro Manu.
Kupenga. Nga Manu. Te Hangi.

Witnesses.—David Rough; George Clarke, P.G.A.; John Johnson, M.D., Colonial Surgeon.

Russell, August 5, 1840

Hake (Urikapana). Kanawa. Haniwa.

Witnesses.—George Clarke, Protector of Aborigines; James Coates, gentleman; James Stuart Freeman, gentleman.

Coromandel Harbour, May 4, 1840

Horeta te Taniwha. Father of Kitahi (Ngatiwhanaunga tribe).
Kitahi.
Puakanga.
Hauauru.

Witnesses.—Joseph Nias, Captain H.M.S. *Herald*; Thomas Bunbury, Major 80th Regiment.

Mercury Bay

Punahi. Ngatimaru tribe. Ngataiepa, Rapupo.

Witness.—Joseph Nias, Captain H.M.S. *Herald*.

Akaroa

IWIKAU. Ngatirangiamoa tribe.
JOHN LOVE. Ngatikahukura tribe.

Witnesses.—Thomas Bunbury, Major 80th Regiment; Edward Marsh Williams.

Ruapuke, Foveaux Straits

JOHN TOUWAICK (TU HAWAIKI). Kaikoura.
TAIAROA.

Witnesses.—Joseph Nias, Captain H.M.S. *Herald*; Thomas Bunbury, Major 80th Regiment.

Otago

JOHN KARITAI. KORAKO.

Witnesses.—Thomas Bunbury, Major 80th Regiment; W. Stewart.

Cloudy Bay, June 17, 1840

MAUI PU.
EKA HARE.
PUKE.
KAIKOURA.
JOSEPH TOMS. Son-in-law of Nohorua.
NOHORUA. Elder brother of Te Rauparaha.
WAITI.
WI.
TE KANAE.
PUKEKO.

Witnesses.—Thomas Bunbury, Major 80th Regiment; W. Stewart.

Kapiti, June 19, 1840

TE RAUPARAHA. TE RANGIHAEATA.

Witnesses.—Thomas Bunbury, Major 80th Regiment; W. Stewart.

Hawkes Bay, June 23, 1840

TE HAPUKU.
WAIKATO. Went to England with Hongi.
MAHIKAI.

Witnesses.—Thomas Bunbury, Major 80th Regiment; Edward M. Williams.

Manukau, March 20, 1840

KAWAU (APIHAI). Chief of Ngatiwhatua tribe.
TINANA.
TE REWETI (WIREMU REWETI).

Witnesses.—W. C. Symonds; James Hamlin.

Kawhia, April 28, May 25, June 15, August 27, September 3, 1840

RAWIRI.
TE KAWANA.
TARIKI.
HAUPOKIA.
TE WARU (HORI).
TAONUI.
HONE WAITERE AOTUROA.
TE MATENA TE WHAPU.
NGAMOTU.
WHAREKAWA.

Witnesses.—James Wallis; John Whiteley.

Waikato Heads, April 11 and 26, 1840

PAENGAHURU. Ngatitipa tribe.
KIWI NGARAE. Ngatitahinga tribe. Father of Apera Kiwi.
PAKI. Ngaungau tribe.
NGAPAKA. Ngatitipa tribe.
KUKUTAI. Ngatitipa. Father of Waata Kukutai.
TE NGOHI. Ngatimaniapoto from Kawhia.
MURIWHENUA. Ngatihaua from Aotea.
TE PAKARU. Ngatimaniapoto from Kawhia.
NUTONE. Afterwards a pensioner.
TE WARAKI. Ngatimaniapoto from Kawhia.
TE ROTO KIWI. Ngatimahuta from Kawhia.
PAERATA NGATIPOU.
KATIPA NGATIPOU. Father of Maihi, who was captured at Rangiriri.
MAIKUKU. Ngatiteata tribe.
APERAHAMA NGAKAINGA. Ngatiteata tribe.
HOANA RIUTOTO. Ngatimahuta tribe.
WAIRAKAU. Ngatitetata tribe.
HAKI AOTEA. Ngatituwehi tribe.
WIREMU TE AWAITAIA (WIREMU NERO). The well-known loyal chief of Whaingaroa.
TUNUI NGAWAKA. Ngatitahinga from Waikato.
KAMURA WAUROA.
POHEPOHE. Ngatihaua from Matamata.
POKAWA RAWHIRAWHI. Ngatihaua from Matamata.
PUATA. Ngatiruru from Otawhao.
MOKOROA. Ngatiruru from Otawhao.
PUNGAREHU. Ngatiapakura from Tarawera.
POHOTUKIA.
TE KEHA. Ngatinaho.
WHAREPU. Ngatiahine from Taupiri (Pene). Killed at Rangiriri.
KANAWA. Ngatiahine from Taupiri (Kihiringi). Killed at Rangiriri.
WHATA. Ngatitipa from Whangaroa.
NGAWAKA TE AO (TE AO-O-TE-RANGI). Ngatiwauroa from Putataka.
PEEHI. Ngatiruru from Otawhao.
WIREMU NGAWARO.
HONE KINGI.
TE TAWA.
TAMATI.
RAPATA WAITI.
TE AWARAHI.
REHUREHU.

Witnesses.—R. Maunsell; B. Ashwell; W. C. Symonds.

Opotiki, May 27 and 28, 1840

†Tautoru.
Takahi.
Aporotanga. Killed by the wife of Tohi-Pekamu after the battle of Te Awa-a-te-Atua.
Atua.
Whakiia.
† Rangimatanuku.
† Rangihaerepo.

Torere, June 11, 1840

Putiki.
Rangihuataki.

Tekaha, June 14, 1840

Haupururangi (Aopurangi).
Hahiwaru.
Haomarama.
Wharau.

Torere, June 14, 1840

Taku.
Tautari.

Witnesses.—James W. Fredarb ;[1] Papahia ; Wiremu Maihi.

Whakatane, June 16, 1840

Mokai.
Mata.
Tarawatewate.
Tunui.
Taupiri.
Haukakawa.
Piariari.
Matatetohia.
Rewa.
Tupara.
Mokai.
Te Uira. Ngatipou tribe.
Ngahu.
Rahiri. Ngatimaru tribe.
Te Moke. Ngatitewehi tribe.
Te Wera. Ngatimaru tribe.

Witnesses.—J. W. Fredarb ; R. Maunsell.

Wellington (Port Nicholson), April 29, 1840

Tuarau.
Hiko-o-te-rangi. Chief of Mana Island.
Tungia.
Rake.
Wharepouri.
Matangi.
Taringa Kuri.
Whakakeho.
Porutu. Attended the Kohimarama Conference, 1860.
Whakatauranga.

[1] Mr. Fredarb, who was trading master of the schooner *Mercury*, added the following note to his copy of the treaty : "The chiefs at Opotiki expressed a wish to have it signified who were Pikopos (*i.e.* Roman Catholics) and who were not, the which I did by placing a crucifix † preceding the names of those who are, as above, and at which they seemed perfectly satisfied."

HORE.
PANI.
RAWI.
KOPIRI.
WHANGA.
NGAPAPA.
REIHANA REWETI.
NGATATA. Father of Wi Tako.
PUAKAWE.
NAPUNA.
MOHIROA.
TUTE.
INGO.
PAKAU.
PATUHIKI.
TE KAHE. Grandmother of the Hon. Dr. Pomare, M.P.; and with Topeora, Rangihiata's sister, was the only woman permitted to sign the treaty.
KOPEKA.
REREWA.
TE PUNI (TE HONIANA).
TUHOTO.
PAKEWA.
POPUKA.

Witnesses.—Henry Williams, Clerk; George Thomas Clayton, Merchant.

Queen Charlotte's Sound, May 4 and 5, 1840

TOHEROA.
REWA.
WHATIMO.
TE TUPE.
TIAHO.
TIKAUKAU.
ORAKAKA.
TUTERAPOURI.
TIRARAU.
NGAORANGA.
HURIWENUA.
TAUKINA.
IWIKAU.
PUNGA.
RANGOWAKA.
KIRIKIRI.
POTIKI.
TARAHEKE.
ANARU.
PIKAU.
HONE. (?) ROPOAMA TE ONE
MANA.
KAPARANGI.
TAPOTUKU.
UAPIKI.
MARU.
KARAKA.

Witnesses.—Henry Williams, Clerk; George Thomas Clayton, Merchant.

Rangitoto, May 11, 1840

TE WHETU (The Star).
PARI.
TAROPIKO.
PUTETE.
RANGIAHUA.
TAHANUI.
OROKAKA.
TOITOI.
TE MAKO.
IPUKOHU.
TE TIHI.
HUIA.
NUKUMAI.

Witnesses.—Henry Williams, Clerk; George Thomas Clayton, Merchant.

Kapiti, Otaki, Manawatu, May 14, 1840

TE RAUPARAHA. Principal chief of Cook's Strait.
KATU.
TE WHIWHI (MATENE).
TOPEORA. Mother of Matene Te Whiwhi.
TE RURU (APERAHAMA).
MATIA.
KEHU.
HAKEKE. Father of Kawana Hunia.
TAUMARU.
MAHI.
TE OTA.
KIHAROA.
TE PUKE.
TOREMI (HOROMONA).
TE AHOAHO (TE KINGI).
TAHURANGI.
PATUROA.
TE TOHE.
TE WHETU.
TAUHEKE.
PAKAU.
WHITIOPAI.

Witnesses.—Henry Williams, Clerk; Octavius Hadfield, Clerk.

Waikanae, May 16, 1840

RERETAWHANGAWHANGA. Father of Whiti.
WHITI. The celebrated Wiremu Kingi.
PATUKEKENO.
NGARAUREKAU.
TE HEKE.
TUAMANE.
NGAPUKE.
PATUKA KARIKI. Died at Taranaki.
NGAKANAE.
PUKERANGIORA.
KUKUTAI. Killed at Te Poutoko.
KOMAKI.
RARANGA.
HOHEPA MATAHAU.
KIHA.
HIANGARERE.
URERUA. Killed at Waikanae.
TE WEHI.
PEHI.
KETETAKERE.

Witnesses.—Henry Williams, Clerk; Octavius Hadfield, Clerk.

Motu Ngarara, June 4, 1840

TE RANGIHIROA. TE OHU.

Witnesses.—Henry Williams, Clerk; George Thomas Clayton, Merchant.

Wanganui, May 28 and 31, 1840

ANAUA (HORI KINGI).
TAWITO (KAWANA PAIPAI).
MAWAE.
RERE.
TE TAURI (WIREMU ERUERA).
RORE.
TUROA.
TAKA.
KURAWHATUA.
RANGIWHAKARURUA.
URIPO.
HIKO.
TAKATERANGI.
PAKORO.

Witnesses.—Henry Williams, Clerk; O. Hadfield, Clerk.

Tauranga, Poverty Bay

MANUTAHI.
TURUKI.
KAINGAKIORE.
ERUERA WINA.
TAKATUA, from Waiapu.
DAVID RANGIKATI, from Waiapu.
TAMAWA KAMEHUA, from Tokomaru.
TE PAKARA, from Turanga.
PAI-TE-RANGI.
TUTAPATURANGI TAETANGAWARE.
TITIRANGI.
TAWARAU.
RANGIUIA UAWA (NOPERA RANGIHUIA).
RANGIWAI, from Waiapu.
MIMIOPAWA, from Waiapu.
KAKATARAU, from Waiapu.
AWARAU, from Waiapu.
TAMITERE, from Tokomaru.
MANGARE, from Turanga.
MARONUI, from Turanga.
TONA (TANAMANAIA), from Turanga.
NGATIKAREAHO, from Wairoa.
TUHURA.
TE HORE, from Turanga.
WHAKAHINGATU, from Turanga.
PONEKAHIKA (HORI), from Uawa.
RANGIWHAKATATAE, from Waiapu.
MOKOPUORONGO (PARATENE). Leader of the Kingites at Tokomaru.
POTOTI, from Turanga.
UIRAMAITAI, from Turanga.
TAWARAKIHI, from Turanga.
TUROA, from Turanga.
MAHUIKA, from Turanga.
TE PANEPANE, from Turanga.
TE WHAREANA, from Turanga.
TE EKE (RAWIRI), from Turanga. Father of Hirini.
TE TORE, from Ahuriri.
TUTAEPA, from Waiapu.
KAURU-O-TE-RANGI (POPATA). Afterwards leader of the King party at Korauruterangi, from Waiapu.
TE POTAE (ENOKA), from Tokomaru. Father of Henare Potae.

Witnesses.—William Williams; Henry Williams, Junr.; G. Clarke, Junr.

Tauranga (now Gisborne)

TE WHANAKE.
HIUTAO.
TAMAIWAHIA.
TE HUI.
PAETUI.
TE KOU.
REKO.
TARI.
MATATAHUNA.
TE KONIKONI.
TAUARUMIA.
NUKA.
TE TUTAHI.
TE POHOI.
PUTARAHI.
PIKITIA.
TE MAKO.
TE PEIKA.
KAPA.
TE HAERREROA.
HOANI ANETA.

Witnesses.—Hoani Aneta; James Stack; Henry Taylor.

CHAPTER VI

THE TREATY

CAPTAIN HOBSON having now by his own efforts and the agency of those who were associated with him completed his negotiations with the native chiefs, it remains for us to examine briefly the nature of the compact into which the Maori and *Pakeha* had thus solemnly entered. The Treaty of Waitangi is a document of few clauses and precise terms. Yet under the conflicting interests which it was designed to harmonise few documents have been more generally misunderstood or more persistently misinterpreted. More than once in high places its utility has been denied, its simple contracts have been repudiated, and its existence has been ignored. Lawyers have repeatedly questioned its legality, courts have discussed its constitutional force, parliaments have debated its wisdom, but still it stands to-day—unaltered in text or spirit—the great charter of Maori rights. Its most virulent enemies have ever been the land speculators, and there are not wanting signs in these times of unsatisfied land hunger—of never-ceasing speculation—that the treaty has either been forgotten by those whose duty it is to remember it, or that its obligations have ceased to have their old-time moral value. Lest we forget that the treaty is still in force, and that native lands are not common plunder for the avaricious *Pakeha*, let us briefly review the circumstances which made the compact between the two nations a political virtue, if not a political necessity.

It is a principle recognised by the civilised nations of the Earth that the discovery of a waste and uninhabited

land by a pioneering country confers on that country a right, as against all other civilised countries, to colonise its new discovery. In such a case the discovering nation may in fact go further, by immediately taking possession of the new-found territory, and assuming sovereignty over it. In this way Norfolk Island being found devoid of inhabitants by Captain Cook, his discovery of the sea-girt isle not only entitled Britain to colonise it, but automatically added it to the possessions of the Empire. This principle has thus been concisely stated by Vattel: "All men have an equal right to the things which have not yet fallen into the possession of any one; and these things appertain to the first occupant. Wherefore, when a nation finds a country uninhabited and without a master, it may lawfully seize upon the same, and after it has adequately denoted its will in this respect another cannot thereof despoil it. Thus navigators going on their voyages of discovery, provided with a commission from their sovereign, and falling in with desert islands, or other desert lands, have taken possession of them in the name of their nation, and commonly this title has been respected, provided that thereupon a real possession has closely followed."

It is equally an acknowledged maxim of the Law of Nations that should the newly discovered land not prove to be "waste and without a master," but that it should be inhabited and under government of any kind, then the mere fact of its discovery by a civilised nation confers upon the discoverer no title to the soil, but only the prior right to colonise as against other colonising nations. This is but the natural reward which belongs to the enterprise displayed in fitting out ships and expeditions destined to navigate unknown seas or to travel in unknown lands. Such prior right to colonise is, however, strictly limited by the important consideration that colonisation can only take place with the free will and consent of the savage or semi-civilised inhabitants of the newly discovered country. In no sense does the act of discovery confer the right of property in the land, or the right of sovereignty

over its people. That is to say, in the abstract, no nation whatever can under any pretext violate the rights of any other independent nation. This was clearly the principle which guided those British Governments to whose lot fell the establishment of the first colonies in America. In all these cases was the property of the Indian tribes respected, and no land was acquired save by purchase, or by some other equitable arrangement made with the aboriginal owners.[1] Hence in the celebrated case of the Cherokee tribe against the State of Georgia, tried in 1832, before the late Chief-Justice Marshall, that eminent judge was able to declare that as the United States had only inherited its rights from Great Britain after the War of Independence, the individual States could not assume rights greater than Britain had claimed to possess prior to that event. No right in Cherokee lands therefore vested in the State until the Indian title had been honourably extinguished.

This equitable principle has not always been observed between so-called civilised nations and semi-barbarous peoples, but that it has long held a place amongst the ideals of men is suggested to us by the Phoenician legend, that when the merchant princes of Tyre and Sidon resolved to establish a trading factory on the site upon which subsequently rose the city of Carthage, they fairly bought the land from the natives of Northern Africa, the area being determined by the length of the thongs cut from a bullock's hide. Such a story, coming down to us as it does through the hoary mists of time, may or may not appeal to our practical present-day minds, but the fact that it was commonly told and commonly accepted amongst the ancients is at least an indication that the principles which govern the conduct of modern nations towards their less fortunate brethren are founded upon and have the sanction of great antiquity.

[1] "One cannot but laud the moderation of the English Puritans who first established themselves in New England. Although provided with a charter from their Sovereign, they purchased of the savages the land they required to occupy. This praiseworthy example was followed by William Penn, and the colony of Quakers which he conducted into Pennsylvania."—Vattel.

When we come to apply these principles to New Zealand it is of course necessary to remember that the first European discoverer[1] of this Dominion was not Cook, but Abel Tasman. The Dutchman's association with the country was, however, so cursory, and his nation's subsequent interest in it so nominal, that to the sailor it appeared only as "a great land uplifted high," while to his countrymen it was known only as a vague scrawl upon the chart. That Tasman's discovery of 1642 gave the Dutch a right to colonise in New Zealand had they been so disposed is undoubted; but whatever rights they had thus acquired, such were clearly exhausted by Holland's failure to assert them during the long period of 135 years that elapsed before Cook came to make a reality of what to Tasman had only been a shadow.

With his characteristic thoroughness Cook left no weak link in the claim which he made on behalf of his nation. He landed on our shores, held intercourse with the natives, he surveyed our coasts, he took formal possession of both Islands "in the name, and for the use of His Majesty King George III."

"A philosopher perhaps might enquire on what ground Lieutenant Cook could take formal possession of this part of New Zealand in the name and for the use of the King of Great Britain, when the country was already inhabited, and of course belonged to those by whom it was inhabited, and whose ancestors might have resided in it for many preceding ages. To this the best answer seems to be that the Lieutenant in the ceremony performed by him had no reference to the original inhabitants, or any intention to deprive them of their national rights, but only to preclude the claims of further European navigators, who under the auspices and for the benefit of their respective States, or Kingdoms, might form pretensions to which they were not entitled by prior discovery."

So wrote one of the great explorer's most friendly biographers, and in his dispassionate review of the facts we have a correct summation of the rights which Cook's

[1] The real discoverer of New Zealand was probably a Polynesian.

discoveries did and did not confer upon our nation. Clearly New Zealand was not a country in which, or over which, Britain could, by Cook's act, acquire a *bona fide* possession, for it was inhabited by a strong and virile people, living under a system of government adequate in all respects for their social and military purposes.

In conferring upon New Zealand her charter of severance from New South Wales in 1840 Lord John Russell thus conveyed to Captain Hobson his view of the governmental state to which the Maori had risen: "They are not mere wanderers over an extended surface in search of a precarious existence; nor tribes of hunters, or of herdsmen, but a people among whom the arts of government have made some progress; who have established by their own customs a division and appropriation of the soil; who are not without some measure of agricultural skill, and a certain subordination of ranks, with usages having the character and authority of law." New Zealand then being an inhabited country and a country under a system of government at least so efficient as to subsequently induce the British authorities to recognise the Maori nation as an independent State, it becomes obvious that this could not be designated a land which could be lawfully seized upon by circumnavigators.

But such rights as Cook's discoveries did confer upon the nation, the Government of that day sought to conserve. Following upon his return to England with the accounts of his travels in strange waters, his contact with strange peoples, his finding of new lands, proclamations were issued which were not contested by other Powers. The Dutch title to these islands was thereby lawfully extinguished, and New Zealand, Van Dieman's Land, and Australia became for geographical and colonising purposes portions of the British Empire.

A laudable effort was made to render the claims of Britain even more explicit when in 1787 Captain Philip was appointed by Royal Commission Captain-General and Governor-in-Chief in and over the colony of New South Wales and its dependencies, which were claimed to

include all the discoveries of Cook in the Southern Pacific. The territory over which the new Governor was authorised to exercise jurisdiction was described in his Commission as extending "from Cape York, the extremity of the coast to the northward in the latitude of 11° 37′ south, to the South Cape, the southern extremity of the coast in the latitude of 43° 30′ south, and inland to the westward as far as 135° of east longitude, comprehending all the islands adjacent in the Pacific Ocean within the latitudes of the above-mentioned capes."

Unfortunately, owing doubtless to imperfect geographical knowledge on the part of those responsible, these boundaries were but loosely defined, for if they had been strictly adhered to, then Britain was setting up a claim not only to Cook's valuable discoveries, but to all the islands eastward of Australia, as far as the western coast of South America, embracing many Spanish discoveries; while on the other hand they excluded not only Stewart's Island, but all that part of the Southern Island of New Zealand south of Bank's Peninsula. Governor Philip's Commission was therefore faulty, because it asserted excessive rights in the one direction and made insufficient claims on the other.

It is true that in later years these boundaries were abandoned and the position made even more anomalous. During the Governorship of Sir Thomas Brisbane it was deemed expedient to separate Van Dieman's Land from New South Wales, and more circumscribed limits were assigned to the Mother State. In this readjustment, whether by accident or design it is impossible now to say, not only Van Dieman's Land but New Zealand were excluded from amongst the dependencies of New South Wales. Then it became an arguable point whether the word "adjacent" had ever covered Islands so far distant from the parent colony, and much legal acumen was expended in the effort to justify the contention that New Zealand had always been beyond the pale of the dependencies.

Up to this point, however, the official mind had never

been troubled by doubts as to the extent of its jurisdiction. Governor Philip not only believed that his authority extended to New Zealand, but far beyond it, and under this belief he actually colonised Norfolk Island as a part of the territory he had been commissioned to govern. In like manner the British Government believed it had a right to all that it claimed in Philip's Commission; and at the Congress of Vienna at the close of the Napoleonic wars in 1814, when the map of Europe was recast, it had its claims allowed, New Zealand being acknowledged by the Great Powers to be a portion of our then infant Empire. Even earlier in the century Ministers had seriously discussed a representation made by Lieutenant-Colonel Foveaux, of the New South Wales Corps, to appoint a Lieutenant-Governor in New Zealand, which under his scheme was to become a penal settlement subordinate to New South Wales. Fortunately for New Zealand that baneful suggestion was not entertained; but Governor Macquarie appointed Justices of the Peace and exercised the functions of Government within the Islands, as did his successor, Sir Thomas Brisbane, down to the time of his proclamation which excluded New Zealand from amongst the dependencies of New South Wales.

Thus far Britain would seem *prima facie* to have kept alive her right to colonise in these Islands as against any other nation, except, perhaps, in the important particular that she had not systematically occupied the land. It is not sufficient that discovery should take place, or that the free will and consent of the native inhabitants should be obtained to the introduction of colonisation. It is an essential factor in the acquisition of new territory that the sanction thus secured should be followed up by speedy emigration and effective settlement, for obviously no nation could be permitted to hold idle for an indefinite period vast tracts of waste country to the exclusion of another nation to whom the inhabitants might also be willing to concede the right to colonise. The principle upon which this view is based has thus been stated: "The Law of Nations, then, will recognise the proprietary

rights, and the sovereignty of a nation over only uninhabited countries which it shall have occupied really and in fact, in which it shall have formed a settlement, or from which it shall be deriving an actual use."

In the case of inhabited countries the condition of occupation is no less exacting. It is, however, hedged about by the additional restriction that before occupation can take place the right to settle must be ceded by the inhabitants. Had the point ever become one of national importance as between ourselves and France, Britain might have pleaded that her occupation was at least as far advanced as that of her rival. She might have pointed to her Missionaries, her traders, and her whalers as evidences of an irregular settlement by no means inconsiderable. But whatever importance British jurists may have attached to such a form of occupation in the settlement of an international dispute, it cannot be denied that it loses much of its value from the fact that the settlement was irregular, and that British Ministers would have been put in the anomalous position of calling to their aid a condition of society which had arisen, not with the sanction of the Crown, but in spite of the Crown.

If these views be founded on the principles of justice, it will be seen that it is a popular fallacy to suppose that Britain acquired any rights of sovereignty in, or over New Zealand by virtue of Cook's discovery. Her position in 1770 was much less absolute than that, and whatever rights she had then acquired she subsequently proceeded to abrogate. In 1817 commenced a period of renunciation during which successive British Governments appeared only too anxious to absolve themselves from all further colonial responsibilities. Not only by neglect, but by direct Act and Ordinance did they repudiate the claim to New Zealand which their predecessors had been laboriously building up through all these years. These Acts of repudiation were specifically enumerated by Lord John Russell in the memorandum which he prepared for Lord Palmerston in reply to the protest of the New Zealand Company against the views on sovereignty adopted by Lord

Normanby in his instructions to Captain Hobson, and it was the known abrogation in these statutes of whatever claim Britain may have had to New Zealand that led to the Declaration of Maori Independence in 1835.

It cannot be said that this Declaration of Independence was a serious bar to Britain's colonising scheme, for under the Confederation of Chiefs which grew out of it, no Government was founded stable enough to merit recognition by other established administrations. Indeed its own members were the first to acknowledge its failure in the face of the difficulties by which it was confronted. As useless and as harmless as the " paper pellet " to which it has been compared by the sarcastic Gipps, it was neither government for the Maori nor a controlling influence for the Europeans. It was therefore not that which the Maori had done which created difficulty for the Melbourne Cabinet when they had seriously to face the question of assuming responsibility in New Zealand—the obstacles to be overcome had, curiously enough, been raised by the acts of the British Parliament itself. This was why, at the critical hour, Britain stood in no better position towards New Zealand than did any of the other nations ; why she had to run the gauntlet of their competition for sovereignty, and why more astute statesmanship on the part of France or the United States might have robbed her of " the fairest flower in all the field."

In bidding for the sovereignty of the country two courses were open to the British Government—force of arms, or honourable negotiation with the chiefs. It is not to be doubted that had Britain chosen to invade the country, she might, by pouring her battalions into it, in course of time have overcome the tribes by the slaughter of the sword. But who can estimate at what a cost the country would thus have been won ?—while the crime of it would have been even more awful to contemplate than the sacrifice of blood and treasure. Happily it can never be suggested that Lord Melbourne's Ministers had ever contemplated such a mode of securing sovereignty. Their personal view was that it must be ceded if it was to be

acquired at all, while the House of Commons had made it abundantly clear that it would accept it on no other terms.

Here then we have the genesis of the treaty. Discovery gave us no right of sovereignty. Force of arms was incompatible with the spirit of the times; possibly beyond the resources of the nation. Negotiation on the other hand had been made easy by the labours of the Missionaries, and the repeated expressions of good-will which had passed between the British Sovereigns and the chiefs. It was the line of least resistance; a mode agreeable to the national conscience, and approved by the laws of civilisation. For these all-sufficient reasons then Captain Hobson was despatched to New Zealand, charged with the mission of securing for the British Crown the sovereignty of the country by the "free and intelligent consent of the natives, according to their established usages."

In proceeding to an analysis of the treaty itself it will not be necessary to refer to the preamble, which is but an abridged recital of all that has appeared in the previous chapters of this work. It asserts no principle, and is remarkable only for the fact that it reflects in dignified terms the spirit of justice and equity in which its promoters desired to approach the Maori people.

In the first clause the chiefs both within and without the Confederation were invited to "cede to Her Majesty Queen Victoria absolutely and without reservation all the rights and powers of sovereignty which the said Confederation or individual chiefs respectively exercise or possess, or may be supposed to exercise or possess, over their respective territories as the sole sovereigns thereof."

It has been said that this was a condition which the natives never did, and could not possibly understand, seeing that they had neither sovereignty amongst themselves, nor any word in their language to express the idea of sovereignty. Their tribal system, it is true, was fatal to the principle of sovereignty in its broadest sense, and until the formation of the Confederation of Chiefs there was no force amongst them capable of exercising absolute

authority over any great number of the people, the sovereignty of each chief being limited to his own tribe. No real sovereignty, however, vested even in the Confederation. From the first it was impotent as a national Government, because it lacked the requisite cohesion. Mutual tribal jealousies still prevailed, making it a Confederation only in name; and so far as is known it did not pretend to exercise any sort of dominion over the people after the excitement consequent upon the advent of Baron de Thierry had subsided. The native mind had therefore learned nothing of what was meant by sovereignty as we understand it, from the union of their chiefs. All that they knew of a paramount authority which it was their duty habitually to obey was the *mana*[1] of their personal chiefs. That they understood perfectly, and that conveyed to them all that they required to understand. Each chief was a sovereign over his own people, and the people were not so lacking in intelligence as not to perceive that the treaty meant the passing of this *mana* from the chief to the Queen. It would, of course, be radically unsound to pretend that every native who signed the treaty had perfectly grasped its provisions, and knew with even moderate certainty what he was retaining and what he was conceding. In many instances, particularly where the land had already been sold, it might not be incorrect to say that some of the chiefs did not even attempt to comprehend it. The red blanket[2] or the juicy plug of tobacco was an irresistible bait to many who felt they had no longer a "name," and so far as they were concerned, sovereignty and all else might fly

[1] Stowell in his *Maori-English Tutor* thus defines *mana*:

> I speak of potency, the right
> To order things as I may deem;
> I, nothing wanting, have the might
> Which clothes authority supreme.

Surely as much power as is possessed by any crowned head, and more than is possessed by some.

[2] For some years after the treaty was signed the red blanket was considered amongst the Maoris the hall-mark of distinction, and no chief who had not received the "treaty blanket" was admitted to the select circle of their counsels.

to the four winds so long as their personal wants and their love of colour were gratified. The predicament in which those natives found themselves who afterwards alleged they had signed the treaty without a full appreciation of its terms and its obligations was poignantly put by Paora (Paul) Tuahaere, who, speaking at the Kohimarama Conference[1] in 1860, said the treaty had come "in a time of ignorance," and upbraided the elder chiefs for being caught thus unwarily. "Blankets were brought by Mr. Williams. These I call the bait. The fish did not know there was a hook within. He took the bait and was caught. When he came to a chief Mr. Williams presented his hook and drew out a subject for the Queen."

In less figurative, but not less pointed speech, Paora was supported by Heme Parae, who declared that the only law he heard of in 1840 was the law of God. "As to what is called the Treaty of Waitangi, I have heard nothing about it. It is true I received one blanket from Mr. Williams, but I did not understand what was meant by it. It was given to me without explanation by Mr. Williams and Reihana."

Twenty-three years after the event, when discussing the mental attitude of the Maori towards the treaty, the Rev. John Warren, one of the Wesleyan Missionaries, wrote: "I was present at the great meeting at Waitangi when the celebrated treaty was signed, and also at a meeting which took place subsequently on the same subject at Hokianga. There was a great deal of talk by the natives, principally on the subject of securing their proprietary right in the land, and their personal liberty. Everything else they were only too happy to yield to the Queen, as they said repeatedly, because they knew they could only be saved from the rule of other nations by sitting under the shadow of the Queen of England. In my hearing they frequently

[1] The Kohimarama Conference was summoned at Auckland in July 1860, by Governor Gore Browne, "to afford an opportunity of discussing with him various matters connected with the welfare and advancement of the two races dwelling in New Zealand." It was attended on the opening day by 112 chiefs from all parts of the country, and next to the meeting at Waitangi in 1840 is the most important native conference ever held.

remarked, 'Let us be one people. We had the Gospel from England, let us have the law from England." My impression at the time was that the natives perfectly understood that by signing the treaty they became British subjects, and though I lived among them more than fifteen years after that event, and often conversed with them on the subject, I never saw the slightest reason to change my opinion. The natives were at that time in mortal fear of the French, and justly thought they had done a pretty good stroke of business when they had placed the British lion between themselves and the French eagle. We have heard indignation expressed at the way in which the natives were, in the treaty, overreached by the Government, especially in the matter of securing to the Queen the right of pre-emption in the purchase of their lands. There is a native proverb which says, with reference to a man of great keenness and sagacity, 'He was born with his teeth,' and in the matter of making bargains the New Zealanders may be said to be a people who were born with their teeth. I believe it is a very long time since it was possible to overreach the natives much in a bargain. I know that their particular clause of the treaty was there by their own urgent request, and that it met with the universal and unqualified approbation of the chiefs."

In adopting this view Mr. Warren is not singular, for we find that his impression is confirmed by many equally competent authorities. It would therefore be an undeserved reflection upon the well-established intelligence of the Maori race to suppose that these indifferents constituted any large section of the people, there being amongst them a wide comprehension of the two great principles embodied in the treaty—that they were surrendering the magisterial control of the country to the Queen, and retaining the possession of the land to themselves.[1] The speeches of its opponents were eloquent of this fact. This

[1] "When casuists afterwards strove to qualify the terms accorded to the Maoris, the words *tino rangatiratanga* foiled them. *Tino* is an intense expression of fulness, comprehension, and precision, and *rangatiratanga* included all the rights of chieftainship."—Rusden.

was what Te Kemara meant when he exclaimed, "If thou stayest as Governor then perhaps Te Kemara will be judged and condemned. Yes, indeed and more than that—even hung by the neck." This surely was what the great Te Heuheu of Taupo meant when, addressing some natives who had signed the treaty, he said: "You are all slaves now. Your dignity and power are gone, but mine is not. Just as there is one man in Europe, King George, so do I stand alone in New Zealand; the chief over all others; the only free man left. Look at me, for I do not hide when I say I am Te Heuheu. I rule over you all just as my ancestor Tonga-Riro, the mountain of snow, stands over all this land."

The forms by which our sovereignty was exercised were doubtless new and strange to them, as witness their amazement at the pains the Crown took to prove a crime against a prisoner who had already confessed his guilt.[1] In some instances the degree of authority parted with may also have exceeded their anticipations, for we are told that it came as a shock to some of the chiefs when they discovered that they were not free to kill their slaves under the new regime as they had been under the old. Failure to comprehend such details is understandable in the peculiarity of the circumstances. Indeed complete clarity of mental vision could not have been expected, and would not have been attained in all particulars had civilised men instead of savages been concerned. The natives, however, understood clearly enough that for the advantages they hoped to reap from the treaty they were yielding much of their existing power to the *Pakeha* Governor, and whether it was much or little they were the more willing to surrender it because they realised that the advent of the European had so altered their social conditions that rule by the old method was no longer possible.

To these convictions must be added the indispensable

[1] In 1841 a Mrs. Robertson, her two children, and a half-caste were murdered at the Bay of Islands by a native named, Maketu. The case was heard at the first Criminal sitting of the Supreme Court in New Zealand, presided over by Chief-Justice Martin, and was watched with the keenest interest by the natives.

persuasions of the Missionaries, in whose word and advice the Maoris placed implicit trust; but the thing which proved the determining influence in the negotiations—more than the inducements offered by the Crown, or the persuasions of the Missionaries—was that the chiefs had acquired a clear grip of the primal fact that whatever it took from them, the treaty left them in secure possession of their lands.

The sovereignty was the shadow, the land was the substance; and since the shadow was already passing from them by force of circumstances over which they were powerless to exercise control, they consented to its surrender with all the less regret. Once having determined upon this course, and given effect to their determination, there was no wavering, even though in its early stages the rule of the *Pakeha* must have clashed harshly with their ideas of individual authority. The Maori people were a people capable of delegating their sovereign rights, and they did so delegate them. The Treaty of Waitangi therefore became what it professed to be, a yielding of the supreme political power in the country to the British Crown,[1] and when the last signature had been put to it, Britain's right to colonise and govern in New Zealand was incontestable before all the world.

That is why it has always appeared to the writer that there was at the time, and has been for many years since, much beating of the air by the importance given to the so-called race to Akaroa, between the British sloop *Britomart* and the French frigate *L'Aube*, when, soon after the consummation of the treaty, the sovereignty of the

[1] Writing on this point to Lord Stanley in a letter dated Torquay, January 18, 1845, Lieutenant Shortland remarks: "I was present at the several meetings of the natives at Waitangi, Hokianga, and Kaitaia for the purpose of considering the treaty, and the impression on my mind at the time was, that the subject was fully understood by them, and they were quite aware of the nature of the transaction in which they were engaged. I was so impressed with this idea, and so struck with the shrewdness and intelligence of many of their remarks at the first meeting at Waitangi, that at the subsequent ones I noted down the speeches of the chiefs, which all serve to show that the natives not only understood the treaty, but that they were peculiarly sensitive with regard to every question affecting their lands."

South Island was supposed to be in danger. As this incident is the leading historical event which seems to challenge the value of the clause now under review it will be convenient to discuss it here.

Major Bunbury had returned from his southern mission on July 4, and at midnight of the 10th the French corvette, *L'Aube*, cast anchor in the Bay of Islands. From the pilot who went out to bring her in, Captain Lavaud heard that British sovereignty had been proclaimed over the country by Captain Hobson, and that the Union Jack was flying over his residence as an evidence of the fact.

This was serious intelligence for the Frenchman, who saw in it a circumstance that would render discreet a material modification of the instructions under which he had sailed from France. He had been commissioned to hoist the French flag at Akaroa, where a colony of his countrymen was to be established under his protection. These instructions had been given to him by the French Ministry in ignorance of the British Government's intentions, and Captain Lavaud now saw that to carry them out in their strict and literal sense must inevitably plunge the two countries into a distressful and useless war. The French Commander thus found himself in a position of great delicacy, but fortunately he was an officer blessed with a healthy frankness of spirit, and he lost no time in communicating to Captain Hobson the real nature of his mission. So soon as he had satisfied himself by an examination of the treaty and the proclamations that British sovereignty had been procured in a manner such as could be approved by other nations, and was effectual in its operation, he readily agreed to respect the rights thus acquired without committing himself so far as to formally acknowledge them until he should hear further from his own Government. At the same time he undertook, upon the first opportunity, to communicate with his Minister, and he entertained little doubt that on his representation of the altered conditions he would be instructed to recognise British sovereignty, and honour the British flag. It is at least certain that at the conferences between the two

officers, an amicable arrangement was arrived at by which the French commander was able to preserve the honour of his own flag, while avoiding the tragedy of a conflict between their respective countries. There is even colour for the suggestion that the subsequent despatch of H.M.S. *Britomart*, followed by *L'Aube*, was only a part of a preconcerted plan, and that the much-paraded race to Akaroa between the French corvette and the British sloop was not a serious contest for sovereignty, but merely a little piece of theatrical play, promoted for the purpose of saving the Frenchman's face. Certain it is that before he left the Bay of Islands, Captain Lavaud had realised that it would be impossible to carry out his instruction at Akaroa without rupturing the national peace, and he was equally determined that he would not accept the responsibility of firing the first shot until he had been further advised from Paris. When this is understood it is all that is necessary to explain the conciliatory manner in which he met the British demands at Akaroa, and participated with our officers in the preservation of order at the southern settlement.

During their stay at the Bay of Islands the officers of *L'Aube* were entertained with the utmost cordiality by Captain Hobson, who in conversation with their Commander learned something of the proceedings of the Nantes-Bordelaise Company, a colonising corporation organised in France for the purpose of establishing a settlement of their own countrymen at Banks's Peninsula, and whose vessel, the *Comte de Paris*, was now within a few days' sail of the coast. In 1838 a Captain L'Anglois, as master of a French whaler, had visited Banks's Peninsula, and there, for some articles of European manufacture valued at £6, together with some agreeable promises, had secured the signatures of several chiefs to a deed conveying to him an estate of 30,000 acres of the Peninsula's finest land.[1] This document, composed in French, pro-

[1] The question of the title to the lands claimed by the Nantes-Bordelaise Company was not dealt with by the New Zealand Land Claims Commissioners, and became the subject of protracted diplomatic

vided the basis of a negotiation which L'Anglois arranged between two mercantile firms in Nantes, two in Bordeaux, and three Parisian gentlemen, by which they agreed to promote the Nantes-Bordelaise Company whose purpose was to promote a French colony in New Zealand. Their project received the sanction and support of Louis Philippe, who undertook to sustain their enterprise by the presence of one or two ships of war in the South Pacific. Meanwhile the French King had repeatedly assured the British Foreign Office that he had no designs towards territorial aggrandisement in New Zealand. This, in a qualified sense, may have been perfectly true, because while it had been agreed that the Nantes-Bordelaise Company was to cede certain lands to the French Crown in consideration of the protection afforded them, there is every reason to suppose that the French colonising design did not extend beyond Banks's Peninsula, and that there never was any serious intention to annex the South Island. This position was made clear to Captain Hobson by Captain Lavaud, and if it was not secretly agreed upon as a means of strengthening the latter's hands in making his representations to his Government, the sending of the *Britomart* south with two Magistrates can only have been a precautionary measure on the part of Hobson, who hoped by this means to make the assurance of his former act doubly sure. It has long been a cherished conviction in our history that by his strategetical move Captain Hobson cleverly outwitted the French. It is more probable that he was acting in concert with them, and that what has hitherto passed as a popular historical fact must now be relegated to the realm of historical fiction. Be that as it may, it is a fact that on the night of July 30, while *L'Aube* lay at her anchors, the old and weather-worn *Britomart* sailed for Akaroa, carrying with her Messrs. Robinson and Murphy, who were instructed to open courts at all the

---

negotiations with the French Government. Finally, in 1845, Lord Stanley directed the issue of a grant for 30,000 acres. This area was afterwards sold to the New Zealand Company, and on the surrender of its charter the unsold portion became the property of the Crown.

settlements on the Peninsula, where the British flag was also to be displayed by Captain Stanley. The manner in which that officer, and those associated with him, executed their mission, is told in the Commander's Despatch, written while the *Britomart* was returning to the Bay of Islands.

HER MAJESTY'S SHIP "BRITOMART,"
September 17, 1840.

SIR—I have the honour to inform Your Excellency that I proceeded in Her Majesty's sloop under my command to the port of Akaroa, in Banks's Peninsula, where I arrived on August 10, after a very stormy passage, during which the stern-boat was washed away, and one of the quarter boats stove. The French frigate *L'Aube* had not arrived when I anchored, nor had any French emigrants been landed. On August 11 I landed, accompanied by Messrs. Murphy and Robinson, Police Magistrates, and visited the only two parts of the Bay where there were houses. At both places the flag was hoisted, and a court, of which notice had been given the day before, was held by the Magistrates. Having received information that there were three whaling stations on the Southern side of the Peninsula the exposed positions of which afforded no anchorage for the *Britomart*, I sent Messrs. Murphy and Robinson to visit them in a whale boat. At each station the flag was hoisted and a court held. On August 15 the French frigate *L'Aube* arrived, having been four days off the port. On the 16th the French whaler *Comte de Paris*, having on board 57 French emigrants, arrived.[1] With the exception of Mr. Bellegui, from the Jardin des Plantes, who is sent out to look after the emigrants, and who is a good botanist and mineralogist, the emigrants are all of the lower order, and include carpenters, gardeners, stone-masons, labourers, a baker, and a miner, in all 30 men, 11 women, and the rest children. Captain Lavaud, on the arrival of the French emigrants, assured me on his word of honour that he would maintain the most strict neutrality between the British residents and the emigrants, and that should any difference arise between them he would settle matters impartially. Captain Lavaud also informed me that as the *Comte de Paris* had to proceed to sea, whaling, that he would cause the emigrants to be landed in some unoccupied part of the Bay, where he pledged himself he would do nothing that could be considered as hostile to our Government; that the emigrants would merely build themselves houses for shelter, and clear away what little land they might require for gardens. Upon visiting the *Comte de Paris* I found that she had on board, besides agri-

[1] These two vessels were crossing the line when Captain Hobson took possession of the North Island by virtue of the Treaty of Waitangi.

cultural tools for the settlers, six long 24-pounders, mounted on field carriages. I immediately called upon Captain Lavaud to protest against the guns being landed. Captain Lavaud assured me he had been much surprised at finding the guns had been sent out in the *Comte de Paris*, but that he had already given the most positive orders that they should not be landed. On August 19 the French emigrants having landed in a sheltered, well-chosen part of the Bay, where they could not interfere with any one, I handed over to Messrs. Murphy and Robinson the instructions entrusted to me by Your Excellency to meet such a contingency. Mr. Robinson, finding that he could engage three or four Englishmen as constables, and having been enabled through the kindness of Captain Lavaud to purchase a boat from a French whaler, decided upon remaining. Captain Lavaud expressed much satisfaction when I informed him that Mr. Robinson was to remain, and immediately offered him the use of his cabin and table as long as *L'Aube* remained at Akaroa. Mr. Robinson accepted Captain Lavaud's offer until he could establish himself on shore. On August 27 I sailed from Akaroa for Pigeon Bay, when finding no inhabitants I merely remained long enough to survey the harbour, which, though narrow and exposed to the northward, is well sheltered from every other wind and is much frequented by whalers, who procure great numbers of pigeons. From Pigeon Bay I went to Port Cooper, where Mr. Murphy held a Court; several chiefs were present, and seemed to understand and appreciate Mr. Murphy's proceedings in one or two cases that came before him. Between Port Cooper and Cloudy Bay I could hear of no anchorage whatever from the whalers who frequent the coast. I arrived at Port Nicholson on September 2, embarked Messrs. Shortland and Stuart, and sailed for the Bay of Islands on September 16.

Much has been said and written concerning this incident, and in the discussion it has been invested with an importance which it does not deserve. In no sense can it rightly be elevated into the crisis of a great international dispute, for the simple and sufficient reason that no dispute existed. Whatever Captain Hobson may have understood as the result of his conversation with Captain Lavaud, the amiable manner in which that officer complied with every request made by Captain Stanley, together with his conciliatory despatch to his own immediate Minister in France, indicate that he at least had no views in the direction of taking forcible possession of any territory in New Zealand, since British sovereignty over it had

been officially declared. The pleasure he expressed when he learned that the British Magistrate had determined to remain amongst the settlers; the ready hospitality he extended to him; his refusal to allow the master of the *Comte de Paris* to land the artillery brought in that vessel; and his promise to do even-handed justice to both English and French should disputes arise, were not the acts of a man who felt that he had been forestalled and worsted in a race involving the sacrifice of new territory and the loss of national prestige.

That Captains Hobson and Lavaud understood each other perfectly is abundantly clear from the letter which the latter wrote to the former over twelve months (September 17, 1841) after the events just narrated. In the month of October 1840 Mr. Robinson, the Magistrate stationed at Akaroa, had intimated his intention of hoisting the British flag, against which Captain Lavaud had successfully protested, as being, in the peculiar circumstances, calculated to inflame the prejudices of the colonists, and to destroy his influence as a keeper of the peace between his own people and the whalers. When Governor Hobson paid his first official visit to Akaroa in September 1841, Captain Lavaud interviewed him and subsequently wrote to him, explaining the incident, and asked that his action might be sustained. During the course of his communication he said:

> You have been good enough to promise me that you will give orders to Mr. Robinson that nothing shall be changed in the already established position at Akaroa, upon which we were agreed at the Bay of Islands, until I should receive fresh instructions. I have received nothing since my arrival in New Zealand, but I learned when you arrived that the corvette *L'Allier* was being fitted out at Brest in February last, to come to relieve me, and would consequently bring the instructions which I now await with so much impatience. This vessel must now soon arrive, and any day I ought to see it make its appearance. From the note of our *chargé d'affaires* at London, which you were good enough to send to me, I have no doubt as to the recognition by the French Government of British sovereignty over these Islands, and that is all the more reason why I should appeal to Your Excellency to maintain the position we are in to-day, until the

arrival of the vessel which will take the place of *L'Aube* in the protection of the fisheries. My conduct at Akaroa should have sufficiently proved to the British Government that I have no idea of opposing the rights of Her Majesty the Queen of Great Britain to the sovereignty, or in any way impeding it, upon the land. There has been no act on my part, other than with the idea of maintaining order in this place, and preventing friction between the two races. It is not without some trouble and firmness that I have been able, up to the present, to maintain order and satisfy the colonists. I have told them that I have taken all the responsibility upon myself until I receive fresh instructions, and that then I would inform them definitely as to the position in which they would be placed with regard to the British Government. If so soon before the time when my promise should be fulfilled some aggressive action on the part of the British Government were to take place my honour would be seriously compromised. The authority which I exercise over my countrymen has, up to the present, been as advantageous to the interests of Great Britain as to the colonists, seeing that it has only been used for the maintenance of order. More than once I have been asked by the Magistrate appointed by Your Excellency to interfere in a quarrel between some Englishmen and the police who had been driven back and beaten by the first named. The corvette which I command, in giving its protection to the authorities, detained the law-breakers for a few days, and since it was proved that the war-ship was a protection for British authority, order has been maintained. Last October, however, this influence which has been exercised only for good by me, was on the point of being destroyed, when Mr. Robinson announced that he was going to hoist the British flag. Upon representations from me he consented to postpone these proceedings. The following were the grounds upon which I based my objection: The hoisting of the flag in the present state of affairs would add nothing to British rights, the flag having already been hoisted and saluted by the corvette *Herald* before my arrival. The proclamations in the name of the Queen had quite another effect, as also had the acts and presence of the Magistrate to enforce the British sovereignty. Nothing on my part could have caused the English authorities to doubt in any way the purity and sincerity of my intentions, and of the arrangements between myself and Captain Stanley, to whom I promised that no arms or projectiles of war should be landed. If the British flag were to be hoisted at Akaroa so shortly before the day when I shall doubtless receive orders from my Government to recognise the British sovereignty, the authority which I exercise over my countrymen would come to an end. I should be unable to interfere in any manner whatever on land for the maintenance of peace and order. I should confine myself to my functions as

captain of my ship, and should regard myself merely as the protector of my nation's subjects in case of trouble or judicial proceedings, as in the case of all foreign countries where there is no Consul. From such a state of affairs serious evils might result, and before long, so you may be assured from the experience of my fourteen months' sojourn here, consternation and disgust would take possession of the colonists; work would not be proceeded with; there would be widespread drunkenness, and most complete disorder. If on the other hand you may think fit to order Mr. Robinson to await the arrival of my instructions, which certainly cannot fail to be in agreement with the spirit of the note of our *chargé d'affaires*, in London, you will at the same time prevent the colony being placed in the undesirable position which I have shown you is possible, and you will give me the pleasure of according to your flag, the day it is hoisted, the honours which are due to it, without any disturbance taking place, as I shall inform the colonists that my Government, having recognised the Queen's sovereignty, they must, like myself, submit to the orders I have received.

This letter Captain Hobson acknowledged with becoming courtesy, and promised that as, under existing circumstances, no question could arise respecting the sovereign rights of Her British Majesty over every part of the colony of New Zealand, he would willingly forego the exhibition of any authority that could have a tendency to weaken Captain Lavaud's influence over the minds of his countrymen. He would therefore not display the British flag or publish any proclamation at Akaroa, unless some pressing and unforeseen event should render such measures necessary.[1]

Fortunately no such exceptional circumstances did arise before the formal acknowledgment was made by France, and in the following November Hobson, when penning his despatch to the Home authorities, was able to assure them that Captain Lavaud's attitude had been consistent throughout; that he had frankly disclaimed any national intentions on the part of his Government, but had vigilantly supported the claims of the French emigrants as private individuals. As a matter of fact, since he had satisfied himself as to the validity of Britain's pretensions, Captain Lavaud had taken up the position

[1] *Vide* his letter to Captain Lavaud, September 20, 1841.

that he was in these waters for no other purpose than to see his countrymen peaceably settled on the estate of 30,000 acres to which the Nantes-Bordelaise Company believed they had secured a title by one of those loose transactions so common in the history of New Zealand. He was determined to preserve the peace until he should be instructed to make war.

But had his intentions been other than peaceable, Captain Hobson's precautions in sending Magistrates to Akaroa could not have made the British title more secure than it already was. The Treaty of Waitangi was a compact such as no civilised nation could, or would ignore, and when Major Bunbury, by virtue of that treaty, hoisted the British flag at the Cloudy Bay *pa* on June 17, 1840, he put the sovereignty in the South Island beyond all question of doubt until it could be wrested from Britain by force of arms.

The most that can be said for the sudden despatch of the *Britomart* to Akaroa, and the proceedings of her Captain and his associates there, is that the presence of British authority on the Peninsula may have prevented the growth of any false ideas concerning national interests in the minds of the emigrants, and so obviated possible friction at a later date. In no sense did it give anew to Britain a right that had already been ceded to her by the only people who were capable of ceding it—the natives. That the official mind of France had no delusions on this point was demonstrated during the discussion which engaged the Chamber of Deputies after the receipt of Captain Lavaud's despatch, when M. Guizot, as Foreign Minister, maintained in the face of the sharpest opposition that the British proclamation read at Cloudy Bay determined by the highest principles known to nations in whom the right of sovereignty lay.

It is both interesting and instructive to observe that during this debate M. Guizot declined to seriously discuss the proclamation issued by Captain Hobson on May 21, declaring the Queen's sovereignty over the South Island, " by right of discovery," although the point was warmly

pressed by MM. Billault and Berryer. Captain Hobson had always favoured this mode of dealing with the South Island, he being under a grave misapprehension both as to the number and character of the natives residing there. Before he left England he felt that his instructions were meagre in this regard, and in seeking more explicit direction from the Chief Secretary of State he drew the attention of Lord Normanby to what he regarded as a material distinction between Britain's position in the two Islands. In August (1839) he wrote to his Lordship:

> The first paragraph (of the original instructions) relates to the acquisition of the sovereign rights by the Queen over the Islands of New Zealand. Under this head I perceive that no distinction is made between the Northern and Southern Islands, although their relations with this country, and their respective advancement towards civilisation are essentially different. The Declaration of Independence of New Zealand was signed by the United chiefs of the Northern Island only (in fact only of the Northern part of that Island) and it was to them alone that His late Majesty's letter was addressed on the presentation of their flag; and neither of these instruments had any application whatsoever to the Southern Islands. It may be of vast importance to keep this distinction in view, not as regards the natives, towards whom the same measure of justice must be dispensed, however their allegiance may have been obtained, but as it may apply to British settlers, who claim a title to property in New Zealand as in a free and independent State. I need not exemplify here the uses that may hereafter be made of this difference in their condition; but it is obvious that the power of the Crown may be exercised with much greater freedom in a country over which it possesses all the rights that are usually assumed by first discoverers, than in an adjoining State which has been recognised as free and independent. In the course of my negotiations, too, my proceedings may be greatly facilitated by availing myself of this disparity, for with the wild savages in Southern Islands, it appears scarcely possible to observe even the form of a treaty, and there I might be permitted to plant the British flag in virtue of those rights of the Crown to which I have alluded.

To this Lord Normanby replied that Captain Hobson had correctly interpreted his instructions when he limited his Lordship's remarks concerning the independence of the New Zealanders to the tribes inhabiting the Northern Island. His knowledge respecting the Southern Island

UNIV. OF CALIFORNIA

Chief of Kapiti Otaki
Manawatu &c

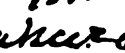
Te Tohu o Te Rauparaha

Kaetu

Te Wiwi

Te Tohu o Topeora
Te Tohu o Te Ruru
Te Tohu o Matta
Te Tohu o Kiharoa
Te Tohu o Te Puke
Te Tohu o Toremi
Te Tohu o Te Ahoaho

Tahurangi



Te Tohu o Kehu
Te Tohu o Te Hakeke
Te Tohu o Taumaru
Te Tohu o Mahi
Te Tohu o Te Ota
Te Tohu o Paturoa
Te Tohu o Te Toke
Te Tohu o Te Wetu

A Section of the Treaty Signatures.

UNIVERSITY OF CALIFORNIA

was too imperfect to allow of his laying down any definite course of action to be pursued there. If it were really as Captain Hobson supposed, uninhabited, or peopled only by a small number of tribesmen in a savage state, incapable from their ignorance of entering intelligently into any treaties with the Crown, then the ceremonial of entering into any such engagements with them would be a mere illusion and pretence which ought to be avoided, and discovery might be made the basis of the Crown's claim. Still he had a marked predilection in favour of a treaty as the only means of affording an effective protection to the natives; "but," he continued, "in my inevitable ignorance of the real state of the case I must refer the decision in the first instance to your own discretion, aided by the advice you will receive from the Governor of New South Wales."

The frankness with which Lord Normanby admitted his " inevitable ignorance " of native conditions in the South Island is in striking contrast to Hobson's confident assurance that they were " wild savages with whom it was scarcely possible to observe even the form of a treaty," for at this time his intercourse with the southern tribes was as limited as that of the Chief Secretary's. Nor was his knowledge of them any more complete when he issued his proclamation on May 21. He was then clearly under the impression that the southern tribes were a people physically, intellectually, and socially much inferior to those whom he had met in the North ; in fact, so much inferior that he did not believe them capable of understanding the spirit or the letter of a treaty. Such an opinion could only have been founded upon information conveyed to him at the Bay of Islands, and that by chiefs who, glorying in the pride of conquest, were no doubt wont to look upon their southern enemies as the siftings of the race ; as " the remnant of their meal." It is therefore open to doubt whether Hobson ever anticipated any great measure of success when he despatched Major Bunbury to the South, and it is conceivable that the results achieved by that ambassador were as pleasing to

the Lieutenant-Governor as the information was surprising that the Southern Island and the southern people had been much misunderstood. The falsity of the impression under which Captain Hobson acted, together with all that had gone before, completely undermines the value of his proclamation of May 21, and M. Guizot was only stating the fact when in answer to his critics he declared in the Chamber of Deputies that " this method of taking possession (by right of discovery) has never had any serious consequences. It could not be regarded as having constituted rights, and that is so true that the English Government has been the first to proclaim it."

The second clause of the treaty proved to be the storm centre of the compact. By those natives who took the trouble to reason out the purpose and effect of the negotiation it was unanimously approved; by the land-jobbers it was as unanimously condemned. Guaranteeing as it did to the tribes the full and complete possession of their lands, fisheries, and forests, it complied with the one condition that made the treaty tolerable to them; yet by reserving to the Crown the right, by pre-emption,[1] to become the medium of purchase between the natives and the settlers, it provided the contentious point upon which all who were interested in the acquisition of land concentrated their attacks. Nor was this opposition shown merely because by a broad sweep of the pen the speculator's sphere of operations had been materially limited for the future, but the hostility became the more vehement because by an equally bold assertion of a great principle of law, the treaty called under review all that they had done in the past. The acknowledgment by the British Crown of the native title to all the land in New Zealand, whether waste or cultivated, was in the opinion of many a blunder grievous enough; but that the Crown should claim the right to scrutinise all titles which had been

[1] In his judgment in the case, Regina *v.* Symonds, delivered in 1847, the late Mr. Justice Chapman laid it down that the pre-emptive right to buy was not limited to the " first refusal," but consisted in the right to buy before all others: *i.e.* that the Crown enjoyed the exclusive right of extinguishing the native title.

acquired before sovereignty was declared, was an excess of zeal which they regarded as nothing short of preposterous.

This feeling of indignation was rampant amongst those who were deeply implicated in land speculations when the proclamations were issued at Sydney and the Bay of Islands, declaring null and void all titles which were not derived from the Crown ; and their ideas of British enterprise were even further outraged when on May 28, 1840, Sir George Gipps introduced to his Legislative Council, " A Bill [1] to empower the Governor of New South Wales to appoint Commissioners to examine and report on claims to grants of land in New Zealand."

In addition to the gigantic pretensions put forward by the New Zealand Company there were 1200 claimants whose demands upon the soil of the country varied from a single rood to over 20,000,000 acres. Three of these exceeded 1,000,000 acres each ; three others were claiming 1,500,000 acres between them; three others comprised more than 25,000 acres each, while upwards of thirty persons expected to be placed in possession of more than 20,000 acres each, the aggregation of alleged purchases amounting to 45,976,000 acres. " Some of these claimants," says one writer, " had nothing more to show for their purchases than an ornamental scrawl on a deed which was so phrased as to be unintelligible to the chiefs who signed it." To reduce these wholesale purchases to some principle regulated by justice was the purpose of the Government ; to let the dead past bury its dead was the fervent wish of all

[1] The Bill was passed on August 4. It enacted that all titles to land in New Zealand were to be absolutely null and void except such as were, or might be, allowed by the Queen. The Governor was to appoint commissioners to examine and report on all claims to grants of land which might be referred to them by him. They were to be guided by the real justice and good conscience of the case. Certain lands, those reserved for the site of a town or village, for purposes of defence, or any other public purpose, were not to be recommended by the Commissioners for grants, but compensation in the shape of other lands might be arranged. The claimant had to prove that he had made a purchase, and there was to be some relation between the quantity of land granted and the sum expended on its purchase, but as a general rule no claimant was to receive more than 2560 acres.

those who had entrenched themselves behind Maori signatures.

By the following June 25 the provisions of the Bill had been widely circulated, on which date a spirited protest against its enactment was received from a number of gentlemen claiming to be landowners in the new colony. This document, which was presented to the Legislative Council by Mr. H. H. Macarthur, set out that the petitioners having perused certain proclamations in the New South Wales Government *Gazette* of January 22, as well as the Bill introduced by the Governor, they submitted that their rights and privileges as subjects of the Queen and as landowners in New Zealand would be unwarrantably and unconstitutionally invaded by the provisions of the said measure. They therefore prayed that they might be heard by the Council in protest against such unjust legislation.

So reasonable a request was readily acceded to by the members of the Legislature, and on June 30 Mr. Busby, the former British Resident, Mr. William Charles Wentworth, Mr. A'Beckett, and Mr. Darvall, barristers-at-law, were introduced to the Council, and on that and several subsequent days addressed the members in opposition to the Bill.

The burden of Mr. Busby's contention in defence of his claim to 50,000 acres, including the site of a township, was that the Bill sought to legalise confiscation, and that therefore the principles which it was designed to enact were at variance with and in excess of all that was sanctioned by the British constitution.[1] No doubt, he said, there were many claims to land in New Zealand which would not bear investigation; but contrariwise there were many respectable settlers on the banks of the rivers and shores of the harbours who would be deeply injured were

[1] Mr. Busby laid off a portion of his property on the bank of the Waitangi River as a township, which he dignified by the name of Victoria. Here he marked off streets, squares, and reserves for public buildings, the lots being sold to Sydney speculators and settlers at Kororareka at the rate of from £100 to £400 per acre. Over seventy years have elapsed since then, but the great city which was to be is still unsubstantial, rude boulders are its cathedrals, and the cabbage palms wave over its empty market-place.

the proposed Bill to become law. This injury would be all the more ruthless because no attempt had been made by the Government, now become so paternal, to prevent British subjects acquiring property in New Zealand, as had been done in the case of those settlers who had come over from Van Dieman's land to originate the settlement at Port Philip. No sooner did it become known that these speculators had purchased extensive tracts of country from the aborigines than a proclamation was issued declaring the illegality of their proceedings. No such prohibition had, however, been put upon the acquisition of property in New Zealand, where the settlers, relying upon certain acts of repudiation by the British Government, had purchased from the natives in the belief that they were negotiating with an independent people. Mr. Busby proceeded to review the various stages of New Zealand's history in order to emphasise the events by which the independence of the chiefs and people had been repeatedly acknowledged, and concluded by asking why the chiefs had been induced under the Treaty of Waitangi to surrender the pre-emptive right of purchase to the Queen if they had never had the right as an independent people to dispose of their lands as they pleased?

Mr. Busby was followed by Mr. Wentworth, one of the local Magistrates, who was claiming 100,000 acres in the North Island, and practically the whole of the South Island except some 3,000,000 acres which he magnanimously conceded had been already sold to other purchasers. The history of Mr. Wentworth's claim, which to say the least, was one of the most scandalous in the long list of extraordinary transactions with the natives, is thus told by Sir George Gipps in his despatch to the Chief Secretary for the Colonies,[1] in which he intimated that in consequence of the part Mr. Wentworth had played in this flagrant attempt to flout the Government, he desired to withdraw a recommendation he had previously made in favour of this gentleman's appointment to the Legislative Council.

[1] Despatch to Lord John Russell, August 16, 1840.

"In the month of February last" (1840), wrote Sir George, "seven [1] chiefs from the Middle Island of New Zealand happening to be in Sydney, it was suggested to me by the persons who had brought them here, and under whose protection they were living, that they should be invited to sign a declaration of willingness to receive Her Majesty as their sovereign, similar in effect to the declaration which Captain Hobson was then engaged in obtaining from the chiefs of the Northern Island. The chiefs in question were accordingly brought to the Government house, and, through the medium of an interpreter, the nature of the document they were required to sign was fully explained to them in the presence of myself, the Colonial Secretary, and several persons who claimed to have purchased land in the Middle Island; and amongst other things it was expressly declared to them that only such purchases of land as should be approved by Her Majesty would ultimately be confirmed. At the conclusion of this conference a present of ten sovereigns was made to each of the chiefs, and they all promised to attend on the next day but one to sign the paper which was to be prepared for them. On the day appointed, however, none of them appeared; and in reply to a message that was sent to them, a short answer was received by one of the Englishmen, under whose protection they were, that they had been advised to sign no treaty which did not contain full security for the possession by the purchasers of all lands acquired from the natives.

"It subsequently appeared that it was by the advice of Mr. Wentworth that they adopted this course of proceeding; and Mr. Wentworth, when before the Council, acknowledged that he had not only given the advice, but also that he had subsequently and after the issue of my proclamation, in conjunction with four or five persons, purchased the whole of the Middle Island (or all the unsold portion of it) from these very natives, paying them for it £200 in ready money, with a promise of a like sum as long as they should live.[2]

"Such was the origin of Mr. Wentworth's claim to twenty millions of acres in the Middle Island," continued Sir George, "and it was the legality and validity of this transaction that he appeared before the Council to defend."

---

[1] Amongst these was Tu Hawaiki, the Otago chief, who afterwards signed the treaty at the request of Major Bunbury.

[2] "In consequence of the animadversions made by me in Council on this proceeding of Mr. Wentworth, and particularly of my having said that he had, in my opinion, exposed himself to a prosecution for a conspiracy, Mr. Wentworth has thought proper to resign his commission as a Magistrate, and (to use his own expression) to separate himself entirely from any official connection with my Government."—*Vide* the above Despatch, August 16, 1840.

The magnitude of the property at stake naturally excited Mr. Wentworth to his most eloquent effort, and in an address of considerable length and subtlety he argued that before the proclamations issued by Sir George Gipps and Captain Hobson, nullifying all titles to land not derived from the Queen, could be binding upon British subjects, they must be founded upon some law previously existing; and if they were so founded then it was the duty of those who had issued them to satisfy the Council what that law was. The principle contained in the preamble of the Bill—that no chiefs, or other individuals of tribes of uncivilised savages had any right to dispose of the lands occupied by them—was, he contended, at variance with British law and with the Law of Nations. Numerous authorities were marshalled in support of this view, and also to prove that it mattered nothing whether the New Zealanders were an independent nation or only a few errant tribes scattered over the country; they still possessed the demesne of the soil to do with as they pleased. This being so, those who purchased land from them were only acting in accordance with the natural rights of the natives and in compliance with the Law of Nations. According to Vattel—one of the world's most eminent authorities upon the relation of one nation to another—individuals landing in an uninhabited country might not only establish colonies, but also erect a government and an empire, and he argued that if such a proceeding was permissible in an uninhabited country, it resulted *a fortiori*, that it might be done in a country that was peopled, provided the natives of that country gave their consent thereto. The story of the first New England Settlement under Davenport and others, in 1620, was urged as conclusive proof that British subjects, unsupported by a Royal Charter, might form colonies and erect governments, as had been done in Connecticut, where the government so established had lasted for over two centuries. He denied that there was any merit in the official assumption that the Crown had derived sovereignty over the Islands of New Zealand by right of discovery. Discovery gave no right of occupation

in an inhabited country, nor would the Law of Nations acknowledge the property and sovereignty of any nation unless its possession were real, unless its settlements were actual, or it had in some way made practical use of the soil. The Bill rested upon the principle that the native was incompetent to sell his own land, and the British subject was incompetent to buy—a principle which he thought he had clearly disproved. Confiscation was the key-note of the measure. It was a Bill designed to take away property, annul grants, and to forfeit all landed possessions acquired by British subjects in New Zealand. He condemned the Bill absolutely, because he claimed to have established on incontestable grounds, and by the aid of indisputable authorities, the right of British subjects to buy land from the New Zealanders, a right which could not be taken away until the Council passed an Act to restrain it. Under these circumstances it was highly illegal to proceed to divest parties of their possessions without adequate compensation, such as was given in England when land was required for public purposes. The compensation to be given in such cases must always be awarded by a jury; therefore the proposed Bill was clearly repugnant to the laws of England. Only a few days previously the Council had passed an Ordinance, making all the laws of England and of the colony of New South Wales applicable to New Zealand. Amongst these was the right of trial by jury of which the proposed Bill was completely subversive; it took away the right of trial by jury; and therefore, declared Mr. Wentworth, the Council could not pass it, or if they did, the Judges could not certify to it.

These arguments were reiterated and amplified by the two barristers, Messrs. A'Beckett and Darvell, and on July 9 their official refutation was placed before the Council by Sir George Gipps, who on that day delivered in reply a speech remarkable for its broad grasp of constitutional history, as well as for its fearless declaration of the attitude adopted by the Crown. It was during the development of this smashing rebuttal that the objectors

were enlightened as to the three great principles of law upon which the second clause of the treaty was founded; "principles, which, until I heard them here controverted," said Sir George, "I thought were fully admitted, and indeed received as political maxims." Briefly these were:

1. That the uncivilised inhabitants of any country have but a qualified domain over it, or a right of occupancy only; and that, until they establish amongst themselves a settled form of government, and subjudicate the ground to their own uses by the cultivation of it, they cannot grant to individuals, not of their own tribe, any portion of it, for the simple reason that they have not themselves any individual property in it.

2. That if a settlement be made in any such country by a civilised power, the right of pre-emption to the soil, or in other words, the right of extinguishing the native title, is exclusively in the Government of that power, and cannot be enjoyed by individuals without the consent of the Government.

3. That neither individuals nor bodies of men belonging to any nation can form colonies, except with the consent and under the direction and control of their own Government, and that from any settlement which they may form without the consent of their Government they may be ousted. That is, so far as British subjects are concerned, they cannot form colonies without the consent of the Crown.

It is not necessary to closely analyse the first of these declarations, as whatever may be said of it as a principle of law it was not in any sense applicable to New Zealand. Logicians may amuse themselves discussing why a people who are capable of granting titles to individuals of their own tribes are yet incapable of granting similar rights or concessions to individuals of other nations; or how the Government of another nation can acquire from those natives a title to land which it has already declared the natives do not possess and have no power to give. In other words, it may form sport to the mental speculator to discover how a Government can extinguish a native title which that Government has affirmed does not exist, for that is what this declaration of principle means if it is to be invested with any meaning at all.

Such reasoning is at this juncture foreign to our

purpose, because, however true it may be that the native lands of New Zealand being held in common, it was not competent for individual natives to grant titles to Europeans, seeing that no individual interests had been ascertained, the right of the tribes of New Zealand to dispose of their lands as they pleased was incontestable. As has already been pointed out, they were by no means in such an uncivilised state as to be devoid of a form of government adequate in all respects for their primitive purposes. Especially was their occupancy and ownership of land highly systematised. It may be true that they had not "subjudicated the ground to their own uses by the cultivation of it," as the term cultivation is freely understood by us, but the waste spaces were just as valuable, just as necessary to them as the garden patches. Their forests, their open plains, their wild mountain sides were as much the sources of their food-supply as were their *kumara* fields, the streams, or the open sea, and so definitely was this understood amongst them that every hill and valley was known, named, and owned under one of their various tenures. There was, in fact, no side of his tribal life about which the Maori held such clear conceptions, or was so fixed and determined as the occupancy and ownership of the soil, for which in olden days, as in *Pakeha* days, he was ever ready to fight and, if necessary, to die.

If then Sir George Gipps desired to convey to his Council the impression that the New Zealanders were incompetent to deal with their own lands, he was setting up an entirely false hypothesis, an error into which he was no doubt led through not being clearly seized of all that Maori land tenure implied, the full meaning of which was afterwards to be debated on many a hard-fought field.

That the right of extinguishing the native title rested solely with the Crown was a sounder contention, based upon principles deep set in constitutional law, and supported by the practice of all colonising nations. It was the endeavour of Mr. Wentworth, and those associated with him, to depreciate the principle of pre-emption by

casting at it the cheap sneer that it was " American law," and so it was. But it was British law before it was American law, and has only been heard of in American courts more frequently than in English tribunals, because questions incidental to the settlement of the New World have called it more frequently into prominence there. Broadly put the principle rests upon the assumption, dating from feudal times, that the King was the original proprietor of all the land in the kingdom, and the true and only source of title. Therefore all valid individual titles must be derived from the Crown. With the development of constitutional government the personality of the King has disappeared, but still no nation will suffer either its own subjects or the subjects of another nation to set up a title superior to its own. It has thus become a right exclusively belonging to the Government in its sovereign capacity, to extinguish the native title to a country which it may be colonising, " to perfect its own domain over the soil, and to dispose of it at its own good pleasure."

Once admitting that the natives of New Zealand had a valid title to the soil of the country, and were competent to deal with that title, the prerogative of the Crown in exercising the pre-emptive right to extinguish it under the terms of an equitable treaty was not difficult to maintain. But the buttress [1] behind the attitude which the Government adopted towards the New Zealand land purchasers was to be found in the third declaration of principle enunciated by Sir George Gipps. Here it was laid down " that neither individuals nor bodies of men belonging to any nation can form colonies, except with the consent, and under the direction and control of their own Government."

The fundamental reason which induces nations to

[1] " The more completely Lord Normanby admits the right of the chiefs to the sovereignty and soil of New Zealand the more fully must he rely on the third principle upon which I have said this Bill is founded, namely, that Englishmen cannot found colonies without the consent of the Crown, and can obtain no titles to lands in colonies but from the Crown."—Extract from Sir G. Gippe' speech.

hedge its subjects about with this restriction, was thus concisely stated by the Select Committee of the House of Commons in 1844. Although this Committee roundly condemned the Treaty of Waitangi as " a part of a series of injudicious proceedings," it was yet as hostile to the New Zealand Company in seeking to set up a settlement independent of Imperial authority, thereby imperilling their own position and prejudicing that of the Crown.

> When large numbers of British subjects have established themselves in distant regions, inhabited only by barbarous tribes, it is impossible for Her Majesty's Government to leave them exposed without protection to the dangers which their own rashness may draw down upon them, or to allow them to exercise, without control, and perhaps to abuse the power which their superior civilisation gives them over the rude natives of the soil. Hence every new establishment of this kind involves a new demand upon the naval and military resources of the Empire, but the undue anticipation of such demands must occasion a very heavy burden upon the nation, and it therefore follows that the enterprises of colonisation should only be entered upon with the sanction and under the authority of the Government.

On this ground and on this ground alone the British Government was justified in calling a halt in the irregular settlement of New Zealand, and if a mistake was made it was not in that the Government now interposed their authority,[1] but in that they had not asserted their rights at a much earlier period. In support of this portion of his argument Sir George Gipps quoted the opinions of four of the most eminent lawyers in England of that day, Mr. William Burgh, Mr. Thomas Pemberton, Sir William Follett, and Dr. Lushington. He was even uncharitable enough to use against the New Zealand Company the opinion of their own legal adviser, Sergeant Wilde, the crushing nature of these authorities completely breaking down the pretensions of his opponents.

" I leave the Honourable Members of this Council," declared Sir George, " to say whether they will take the

[1] For a further exposition of this point the reader is referred to what has been called the " classic " judgment of the late Mr. Justice Chapman in Regina *v.* Symonds, 1847.

law from the authorities which I have produced or from the learned gentlemen who have been heard at their table; remembering, moreover, that the former were giving their opinions against their clients, the latter arguing, as they were bound to do, in favour of them."

Sir George also claimed for the British Government the right to intervene in New Zealand affairs, so far as land titles were concerned, on the ground of its immediate contiguity to the colony of New South Wales, in support of which claim he quoted an opinion expressed by a Committee of the House of Commons in 1837, and in further appeal he might have advanced the fact that in the previous fifty years Great Britain had expended no less a sum than £8,000,000 upon colonisation in the South Pacific, a fact which was surely substantial enough to create the peculiar rights which are inseparably associated with those intimate relations which grow out of neighbourhood. Finally, he thus summarised the powers which were sought for in his measure and those which it did not seek:

The Bill, gentlemen, is not a Bill of spoliation as it has been described; it is not a Bill to destroy titles, but rather to bestow titles on persons who at present have none, and who cannot get any but from the Crown. It is not a Bill to take away any man's *tenementum*, but to give him a *tenementum*, provided he can show that he has a fair and equitable claim to it, though not indeed a *tenementum* to any one in the lands which were purchased, or pretended to be purchased, after the issue of my proclamation and in defiance of it, for not one acre of such land shall any one ever acquire under it. Nor is it, gentlemen, a Bill to give Her Majesty any power that she does not already possess; for her power to disallow these titles is vested in her by virtue of her prerogative, and of that principle of English law which derives all landed property from the gift of the Crown. Her Majesty's prerogative in this matter is about to be exercised, not for the love of power, not for the lust of patronage, but for the good of her subjects, for which alone it is given to her; and the exercise of it in this case will be an additional proof that the prerogative is what it was elegantly described to be in the course of the pleadings in the Grenada case, of which we have heard so much, the *decus et tutamen regni*, the grace, the ornament, the safeguard, not *regis*, of the King, but *regni*, of the realm. I have not heard one reasonable and disinterested person object to the main purpose of this Bill. Of all the witnesses examined before the

Committee of the House of Lords in 1838, no one was so wild as to say that all purchases from the natives of New Zealand were to be acknowledged; no one pretended, because the Narraganset Indians sold Connecticut, as we have been told they did, for a certain number of old coats and pairs of breeches, or because they sold Rhode Island (as I find they did), for a pair of spectacles, that therefore Her Majesty is bound to acknowledge as valid purchases of a similar nature in New Zealand. The witnesses to whom I have alluded all considered the New Zealanders as minors, or as wards of Chancery, incapable of managing their own affairs, and therefore entitled to the same protection as the law of England affords to persons under similar or analogous circumstances. To set aside a bargain on the ground of fraud, or of the incapacity of one of the parties to understand the nature of it, or his legal inability to execute it, is a proceeding certainly not unknown to the law of England; nor is it in any way contrary to the spirit of equity. The injustice would be in confirming any such bargain; there would indeed be no excuse for Her Majesty's advisers, if, by the exercise of her prerogative, she were to confirm lands to persons who pretend to have purchased them at the rate of 400 acres for a penny; for that is, as near as I can calculate it, the price paid by Mr. Wentworth and his associates for their twenty millions of acres in the Middle Island. A great deal was said by this gentleman, in the course of his address to the Council, of corruption and jobbery, as well as the love which men in office have for patronage. But, gentlemen, talk of corruption! talk of jobbery! Why, if all the corruption which has defiled England since the expulsion of the Stuarts was gathered into one heap, it would not make up such a sum as this; if all the jobs which have been done since the days of Sir Robert Walpole were collected into one job, they would not make so big a job as the one which Mr. Wentworth asks me to lend a hand in perpetrating; the job, that is to say, of making to him a grant of twenty millions of acres at the rate of 100 acres for a farthing! The Land Company of New South Wales has been said to be a job; one million of acres at eighteen pence per acre has been thought to be a pretty good job, but it absolutely vanishes into nothing by the side of Mr. Wentworth's job. In the course of this gentleman's argument, he quoted largely from Vattel and the Law of Nations to prove the right of independent people to sell their lands; and he piteously complained of the grievous injustice which we should do to the New Zealanders if we were to deny them the same right; and the Council may recollect that when I reminded him that he was here to maintain his own rights and not those of the New Zealanders, he replied, not unaptly, that as his was a derivative right, it was necessary for him to show that it had previously existed in the persons from whom he had derived it; it was, in fact, necessary for him to show that the

right existed in the nine savages, who were lately in Sydney, to sell the Middle Island, in order to show his own right to purchase it from them at the rate of 400 acres for a penny! Lastly, gentlemen, it has been said that the principles on which this Bill is founded are derived from the times of Cortez and Pizarro—times when not only the rights of civilised nations, but the rights also of humanity, were disregarded. To this I answer, that whatever changes (and thank Heaven they are many) which the progress of religion and enlightenment have produced amongst us, they are all in favour of the savage, and not against him. It would be indeed the very height of hypocrisy in Her Majesty's Government to abstain, or pretend to abstain, for religion's sake, from despoiling these poor savages of their lands, and yet to allow them to be despoiled by individuals being subjects of Her Majesty. It is in the spirit of that enlightenment which characterises the present age, that the British Government is now about to interfere in the affairs of New Zealand. That it interferes against its will, and only under the force of circumstances, is evident from Lord Normanby's despatch; the objects for which we go to New Zealand are clearly set forth in it, and amongst the foremost is the noble one of rescuing a most interesting race of men from that fate which contact with the nations of Christendom has hitherto invariably and unhappily brought upon the uncivilised tribes of the earth. One of the gentlemen who appeared before you did not scruple to avow at this table, and before this Council, that he can imagine no motive Her Majesty's Ministers can have in desiring the acquisition of New Zealand but to increase their own patronage. The same gentleman is very probably also unable to imagine any other reason for the exercise of Her Majesty's prerogative than the oppression of her subjects. These, gentlemen, may be Mr. Wentworth's opinions. I will not insult you by supposing they are yours. You, I hope, still believe that there is such a thing as public virtue, and that integrity is not utterly banished from the bosoms of men in office. To your hands, therefore, I commit this Bill. You will, I am sure, deal with it according to your consciences, and with that independence which you ought to exercise, having due regard for the honour of the Crown and the interests of the subject; whilst for myself, in respect to this occupation of New Zealand by Her Majesty, I may, I trust, be permitted to exclaim, as did the standard-bearer of the Tenth Legion when Caesar first took possession of Great Britain, *Et ego certe officium meum Reipublicae atque Imperatori praestitero*, fearlessly alike of what people may say or think of me, I will perform my duty to the Queen and to the public.

This forceful presentation of the case for the Crown left the Council but one course open to it, and on the following August 4 the Bill had passed through all its

stages and became a colonial statute. Under its provisions Commissioners in the persons of Messrs. Francis Fisher, William Lee Godfrey, and Matthew Richmond were appointed and commenced their investigation of land claims at the Bay of Islands. The separation of New Zealand from the colony of New South Wales in April 1841, however, put an end to the functions of the Commissioners under the measure, and it became necessary to revive their powers under a New Zealand statute. In his instructions covering the granting of a new Charter to New Zealand as an independent colony, Lord John Russell, the new Chief Secretary, had sustained the attitude adopted by his predecessor, Lord Normanby, on the land question. Accordingly, on June 9, 1841, under advice from Lord John, an ordinance was passed by the Legislative Council assembled at Auckland, repealing the previous Act of New South Wales and furnishing Captain Hobson, the now Governor of New Zealand, with the requisite power to appoint their successors. Intelligence had also been received in the meantime that Mr. Spain, an English lawyer, had been appointed Chief Commissioner of land claims; and under the New Zealand statute only two of the original Commissioners were reappointed, Mr. Fisher having accepted the office of Attorney-General to the colony.

With the deliberations and adjustments of this Commission we are not particularly concerned. What is of importance is that its proceedings led to a voluminous, and at times acrimonious correspondence between the New Zealand Company and Lord Stanley, who, in 1841, succeeded Lord John Russell as Secretary of State for the Colonies in Sir Robert Peel's cabinet. During the course of this correspondence the Company boldly maintained that, under an arrangement made with his predecessor,[1]

[1] In November 1840 Lord John Russell entered into an agreement with the Company, by which they were to become entitled to select out of the extensive domain claimed by them one acre for every 5s. they could prove they had expended upon colonisation in New Zealand. A Mr. Pennington, a London accountant, was appointed to discover what the Company's expenditure had been. He reported that they

they were so situated as to be beyond the pale of the Commission's enquiries which they said would shake every title in their settlements. They declared that the circumstances in which they had acquired the land they were now claiming were such as could not be affected by the Treaty of Waitangi, they even repudiated the validity of the treaty itself. On January 24, 1843, Mr. Joseph Somes, as Governor of the Company, despatched that celebrated letter to Lord Stanley in which occurred this significant passage: "We have always had very serious doubts whether the Treaty of Waitangi, made with naked savages by a Consul invested with no plenipotentiary powers, without ratification by the Crown, could be treated by lawyers as anything but a praiseworthy device for amusing and pacifying savages for the moment."

On the 15th of the following month a further letter was received from Mr. Somes, in which he specifically denied the application of the treaty to the particular possessions of the Company; and in order to give a verisimilitude of truth to his argument deliberately made light of the historical facts connected with the signing of the treaty:

"We have not," he wrote, "thought proper, hitherto, to advert to the Treaty of Waitangi except incidentally. But as we observe that it has occasionally been dwelt upon by your Lordship as being of some importance to the view taken by you in opposition to our claims, it is well that we should not quit the subject without remarking that your Lordship appears always to speak of that treaty as bearing on the entire claim of the Company. Now, your Lordship ought to be apprised of the fact that the Treaty of Waitangi itself applies to no part of the vast extent of country over which we claim the right of selection.

---

had expended, as far as could be ascertained, the sum of £200,000, which on the basis of the arrangement entered into would have entitled them to select, approximately, 1,000,000 acres. This the Company asserted to Lord Stanley was a final determination of their rights, and that they were *ipso facto* entitled to the land. Lord Stanley, however, held that the Company still had to show that they had lawfully and equitably extinguished the native title over this area, and that for this purpose their land must come under investigation by the Commission. The correspondence is embodied in the Parliamentary papers of the period.

The chiefs who signed the treaty neither could, nor did, pretend to cede anything but the northern corner of the Northern Island. Subsequently, it is true, Captain Hobson procured the accession to the treaty of chiefs further south. But the alleged accession of the chiefs within the limits of the Company's possessions in the Northern Island rests merely on evidence far too slight and loose to be taken as establishing a fact of such grave public character; at any rate, half at least of the 20,000,000 affected by our claim lie in the Middle (South) Island; and the Middle and Stewart's Islands, it is obvious, cannot be affected by the Treaty of Waitangi, inasmuch as Her Majesty's title to them was 'asserted' on the grounds of discovery without pretence to any treaty or cession."

This attempt to mislead the Minister by a flagrant disregard for the proceedings of Major Bunbury and all that those proceedings implied, was unfortunately but too characteristic of the methods pursued by the Company at this time, whose officers had now developed a dexterity in conjuring with facts against the subtlety of which the Minister could not too jealously guard the public interests.

To the equivocal attitude adopted by the Company Lord Stanley replied through his Under-Secretary, Mr. Hope, in one of the noblest passages ever penned by a British Minister,—a passage in which he sternly refused to sacrifice official integrity to mere commercialism or national honour to ambitious personal ends:

"Lord Stanley," wrote Mr. Hope, "is not prepared, as Her Majesty's Secretary of State, to join with the New Zealand Company in setting aside the Treaty of Waitangi, after obtaining the advantages guaranteed by it, even though it might be made with 'naked savages,' or though it might be treated by lawyers as 'a praiseworthy device for amusing and pacifying savages for the moment.' Lord Stanley entertains a different view of the respect due to the obligations contracted by the Crown of England, and his final answer to the demands of the New Zealand Company must be that, so long as he has the honour of serving the Crown, he will not admit that any person, or any Government acting in the name of Her Majesty, can contract a legal, moral, or honorary obligation to despoil others of their lawful and equitable rights."

Foiled in their efforts to induce the Colonial Minister to award them the full measure of their enormous claim without question or enquiry, the Company then preferred

a claim for compensation against the State on the grounds that the policy of the Colonial Office and the proceedings of the Government in New Zealand had brought them to the verge of financial ruin. Still powerful in the House of Commons they were able to exert considerable influence there, and in April 1844 a Select Committee was set up, with Lord Howick, now one of the Company's warmest friends, as Chairman, and an order of reference which authorised them " to enquire into the State of the Colony of New Zealand, and into the proceedings of the New Zealand Company."

The Committee sat until July, taking voluminous evidence from many persons who had some previous knowledge of the country, and when they met to formulate their report it was found that they were sharply divided on material points. A section of the Committee, led by Messrs. Cardwell and Hope, Lord Stanley's Under-Secretary, endeavoured to so frame the report as to make amongst others the following acknowledgments:

That from the time of the discovery by Captain Cook to the beginning of the year 1840, the independence of New Zealand had never been questioned by this country, and in 1832 was recognised by the British Government in a very peculiar and formal manner.

That the urgent applications made by private individuals from time to time to the Colonial Office for the adoption of these islands as a British colony, were reluctantly acceded to by the British Government in 1839, with a view to preventing the evils arising and apprehended from irregular and unauthorised settlement.

That this adoption was effected in the early part of 1840 by an agreement called the Treaty of Waitangi, made by Captain Hobson with upwards of 500 chiefs and other natives, claiming and admitted on the part of this country, to represent the whole population, so far as regarded the Northern Island; while the other islands, which contained no population capable of entering into anything resembling a civil contract, were assumed to the British Crown by the right and title of discovery.[1]

That this treaty was made by Captain Hobson in pursuance

[1] Both sides of the Committee appear to have disregarded Major Bunbury's proceedings, not because they had no constitutional value, but probably because they were not sufficiently posted in the facts.

of instructions previously received from Home, and that his proceedings obtained the subsequent approbation of the Government.

That the natives ceded to the Queen the sovereignty of the Northern Island, and the Crown secured, in return, to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties, which they may collectively and individually possess, so long as it is their wish and desire to retain the same in their possession.

That this treaty is binding, in conscience and policy, on the British Government and is highly valued by the native tribes.

That although the laws and usages of the natives with regard to the possession of and title to land are very obscure and complicated, yet evidence has been adduced to the Committee showing that these laws and usages are in some sense recognised by the natives, as well among themselves as in reference to European purchasers, and many instances have been proved in which they have voluntarily and fully recognised European titles.

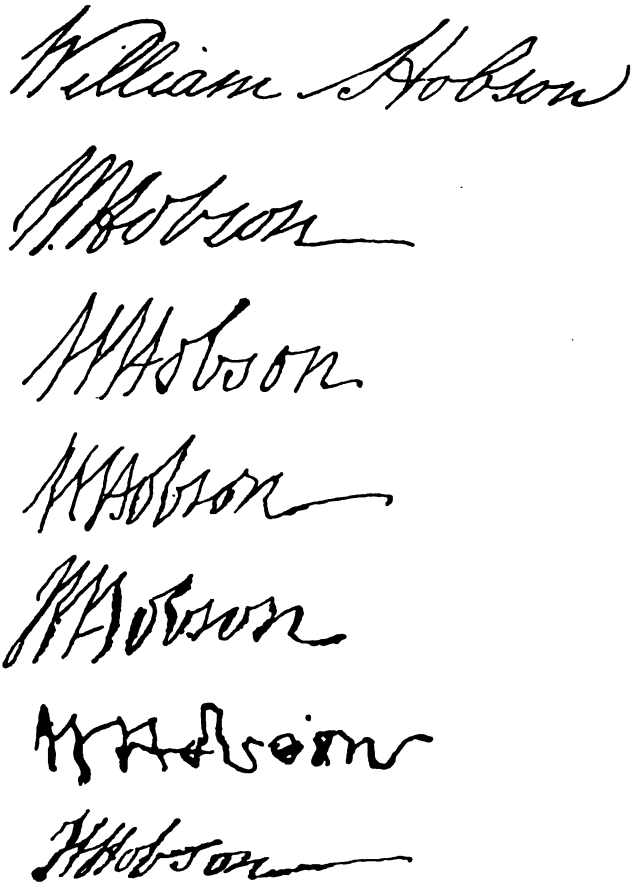
That while it appears highly probable that much of the soil of New Zealand will ultimately rest in the British Crown, as land to which no proprietary title of any kind can be established by an individual, or by any tribe, yet it is impossible, by any fair construction of the treaty, to limit the native claims either to the *pas* or to the grounds in actual cultivation by the natives at any particular time.

That any attempt to carry out in practice any such construction must alienate the natives from every feeling either of confidence or affection towards the British Government, and would probably lead to conflicts of a sanguinary character, or even to an exterminating warfare between the races, for which the British power in these Islands is at present wholly inadequate and unprepared.

That it is not expedient to increase the military force in the colony, at great expense, for a purpose unjust in itself, and tending to retard the peaceful settlement of the colony and the civilisation of the native race.

These recommendations of Mr. Cardwell, which also largely reflected the opinions of the Government, were energetically opposed by Lord Howick and his friends, who put forward a counter series of suggestions, which just as strongly reflected the views and aspirations of the New Zealand Company, particularly upon the crucial point that no acknowledgment should be made of any proprietary rights on the part of the natives in the un-

UNIV. OF
CALIFORNIA



CAPTAIN HOBSON'S SIGNATURES TO THE TREATY.

These signatures to the various copies of the Treaty used indicate in a pathetic way the progress of Captain Hobson's illness. The final copy he was not able to sign, and it was signed by Lieut. Shortland on his behalf.

UNIV. OF
CALIFORNIA

occupied lands of New Zealand. They affirmed amongst other things:

1. That the conclusion of the Treaty of Waitangi by Captain Hobson with certain natives of New Zealand, was a part of a series of injudicious proceedings which had commenced several years previous to his assumption of the local Government.

2. That the acknowledgment by the local authorities of a right of property on the part of the natives of New Zealand in all wild lands in those Islands, after the sovereignty had been assumed by Her Majesty, was not essential to the true construction of the "Treaty of Waitangi," and was an error which has been productive of very injurious consequences.

3. That means ought forthwith to be adopted for establishing the exclusive title of the Crown to all land not actually occupied and enjoyed by natives or held under grants from the Crown, such lands to be considered as vested in the Crown for the purpose of being employed in the manner most conducive to the welfare of the inhabitants, whether natives or Europeans.

When the Committee was asked to determine which of these two rival reports it would adopt, it was found that opinion was evenly divided, but on a division being taken Lord Howick succeeded in defeating his opponents by the narrow majority of one vote, the voting being as follows upon the question proposed by Mr. Roebuck: "That the Committee now proceed to the consideration of the resolutions proposed by the chairman as the basis of the report."

Ayes—7.	Noes—6.
Mr. Milnes.	Mr. Hope.
Mr. Roebuck.	Mr. R. Clive.
Mr. Hawes.	Mr. Cardwell.
Mr. Aglionby.	Lord Jocelyn.
Mr. Charteris.	Sir Robert Inglis.
Lord Francis Egerton.	Mr. Wilson Patten.
Lord Ebrington.	

In vain did Mr. Hope endeavour by moving amendments to induce the Committee to adopt a view of the Treaty of Waitangi more favourable to the natives, but through the divisions of several days the Company held its majority, and on July 23 the Committee agreed to the draft report proposed by Lord Howick, and which was based on the resolutions previously approved. When

this report was laid before the House of Commons it was found that the Committee had traversed the policy adhered to by the Melbourne and the Peel Governments in its interpretation of the Treaty of Waitangi, and that they had taken the responsibility of declaring that:

The evidence laid before your Committee has led them to the conclusion that the step thus taken (the promotion of the Treaty of Waitangi), though a natural consequence of previous errors of policy, was a wrong one. It would have been much better if no formal treaty whatever had been made, since it is clear that the natives were incapable of comprehending the real force and meaning of such a transaction, and it therefore amounted to little more than a legal fiction, though it has already in practice proved to be a very inconvenient one, and is likely to be still more so hereafter. The sovereignty over the Northern Island might have been at once assumed without this mere nominal treaty, on the ground of prior discovery, and on that of the absolute necessity of establishing the authority of the British Crown for the protection of the natives themselves, when so large a number of British subjects had irregularly settled themselves in these Islands, as to make it indispensable to provide some means of maintaining good order amongst them. This was the course actually pursued with respect to the Middle and Southern Islands, to which the Treaty of Waitangi does not even nominally extend, and there is every reason to presume that, owing to the strong desire the natives are admitted to have entertained for the security to be derived from the protection of the British Government and for the advantages of a safe and well-regulated intercourse with a civilised people, there would have been no greater difficulty in obtaining their acquiescence in the assumption of sovereignty than in gaining their consent to the conclusion of the treaty, while the treaty has been attended with the double disadvantage: first, that its terms are ambiguous, and in the sense in which they have been understood highly inconvenient; and next, that it has created a doubt which could not otherwise have existed, which, though not in the opinion of your Committee well founded, has been felt and has practically been attended with very injurious results, whether those tribes which were not parties to it are even now subject to the authority of the Crown.

Your Committee have observed that the terms of the treaty are ambiguous, and in the sense in which they have been understood, have been highly inconvenient; in this we refer principally to the stipulations it contains with respect to the right of property in land. The information that has been laid before us shows that these stipulations, and the subsequent proceedings of the Governor,

founded upon them, have firmly established in the minds of the natives notions which they had but then very recently been taught to entertain, of their having a proprietary title of great value to land not actually occupied, and there is every reason to believe that, if a decided course had at that time been adopted, it would not have then been difficult to have made the natives understand that, while they were to be secured in the undisturbed enjoyment of the land they actually occupied, and of whatever further quantity they might really want for their own use, all the unoccupied territory of the Islands was to vest in the Crown by virtue of the sovereignty that had been assumed.

The findings of the Committee were thus so radically opposed to the established views of Lord Stanley upon the construction to be placed upon the treaty, that the Minister refused to countenance them in any way, or to ask the House of Commons to become a party to a policy which, had it been enforced, would inevitably have led Britain into one of her little wars, as inglorious as it would have been unjust.[1]

In transmitting a copy of the Committee's report to Governor Fitzroy, the Chief Secretary stressed in his Despatch of August 13 (1844) the narrow margin of votes by which the report had been adopted, and emphasised the high moral principle that it was still the duty of both the Governor and himself to administer the affairs of the colony " with a due regard to a state of things which we find, but did not create, and to the expectations founded, not upon what might have been a right theory of colonisation, but upon declarations and concessions made in the name of the Sovereign of England." The power of Parliament was, therefore, not invoked to aid the Company in evading its just obligations to the natives. Their land claims were still to be the subject of searching enquiry by the Chief Commissioner, Mr. Spain, and for the moment the Treaty of Waitangi was vindicated by the steadfastness of the Colonial Minister. But the battle was not

[1] In October 1845, Governor Fitzroy wrote to Lord Stanley: " I cannot believe that those most dangerous resolutions of the House of Commons (Committee) in 1844 respecting unoccupied land, can be adopted by Her Majesty's Government, but if such should be the fatal case, the native population will unite against the settlers and the destruction of the colony as a field for emigration must result."

over, the scene of the conflict only was changed. On June 17, 1845, Mr. Charles Buller, then representing Liskeard, and whose long association with Lord Durham and Mr. Gibbon Wakefield had more than once brought him into prominence in New Zealand affairs, sought to induce the Commons again to discuss both the policy and administration of the colony on the floor of the House. Then ensued the historic debate, during which New Zealand achieved the distinction of claiming the exclusive attention of Parliament for three consecutive nights.

It would be superfluous to recapitulate here the speeches delivered during this memorable discussion, embodied as they are in the records of the nation; it is, however, worthy of passing remark that for the sake of some party advantage several prominent members, notably Lord John Russell, chose to reverse all their previous professions on the subject of the Treaty of Waitangi, and threw the weight of their influence into the scale against the just recognition of the rights of the New Zealand natives. Well might Rusden exclaim: "On what plea could the Whigs abandon the construction put upon the treaty by their own leaders who made it?"

A division being taken, Mr. Buller's motion was defeated, and on receipt of this intelligence Governor Fitzroy [1] wrote with perfectly natural elation to Henry Williams: "Let me congratulate you on the result of the three nights' sharp debate in the House of Commons on New Zealand. The Company were beaten by fifty-one votes, the integrity of the Treaty of Waitangi being thus secured against all their infamous endeavours, for *that* was the point at issue."

While the events thus far narrated in this chapter had been evolving from the lap of time, Governor Hobson had died,[2] and had been buried at Auckland. Lieutenant

[1] *Vide* his letter to Archdeacon Henry Williams, November 11, 1845.

[2] Governor Hobson died at 12.15 A.M. on September 10, 1842, at Auckland. Amongst a large section of the Northern Maoris the belief was current that he had been *makutaed* (bewitched) by an old *tohunga* (priest) at a banquet, the *tohunga* being instigated by the section of natives who were opposed to the treaty.

Shortland's brief term of administration had been darkened by the Wairau Massacre, the first fruit of the contempt shown by the Wakefields for the landed rights of the natives. His successor, Governor Fitzroy, had long since been driven to distraction by the machinations of the Company and the failure of the Home authorities to give him needful support in either men or money. The crowning disaster of his administration was the attack upon the town of Kororareka at daylight on March 11, 1845, by Heke and Kawiti. The House of Commons had been ignorant of this happening when it had debated Mr. Buller's motion in the previous June, but when the ominous tidings reached England in July, that wary gentleman sprang once more alertly to the attack by moving: "That this House regards with regret and apprehension the state of affairs in New Zealand; and that those feelings are greatly aggravated by the want of any sufficient evidence of a change in the policy which has led to such disastrous results."

This debate was not less acrimonious than its predecessor, for not only was Lord Stanley attacked, but Mr. Stephen, the permanent head of the Colonial Department, was assailed with equal virulence. Stanley had ere this removed to the House of Lords, and Stephen was precluded by virtue of his position from defending himself. But for these two men, as well as for the honour of the nation, Sir Robert Peel stood in stalwart defence. He told the House that he was not enamoured of the policy which had resulted in the consummation of the Treaty of Waitangi. For his part he candidly admitted that in his opinion it was a mistake, but since the treaty was an indisputable political fact, its obligations must not be violated. Lord Melbourne's Government, he said, had with a full sense of their responsibility, entered into the compact and England was unquestionably bound by it.[1]

In vindication of Lord Stanley he declared that the

[1] In the previous debate Sir Robert had said: "If ever there was a case where the stronger party was obliged by its position to respect the demands of the weaker it was the engagements contracted under such circumstances with these native chiefs."

real purpose behind Mr. Buller's motion was an insidious desire to unjustly censure his Minister for avowing his determination to carry honourably into effect the treaty made by his predecessor. Then reverting to the land question he continued: "After all the volumes of controversy which have appeared, the question really resolves itself into this: Shall the Government undertake to guarantee in this country, within certain limits in New Zealand, a certain amount of land without reference to the rights to that land vesting in the natives? This I tell you distinctly we will not do, and if the House entertains a different opinion, it is but right that it should give expression to it. We will not undertake, in the absence of surveys and local information as to the claims of the natives, to assign to you a million, or any other number of acres, and dispossess the natives by the sword."

In concluding he again entered upon a vigorous defence of his Colonial Minister, declaring his continued confidence in Lord Stanley in the following resolute words: "I will not do that which the New Zealand Company seem to think I might do—undertake to supersede a Minister who I believe has discharged his official duties with almost unexampled ability, and with a sincere desire to promote the interests of every colony over which he now presides."

Influenced by the Premier's strenuous advocacy, the House again rejected Mr. Buller's motion on July 23, but the friends of the Company derived some comfort from the knowledge that a despatch had been sent recalling Governor Fitzroy, who, in his anxiety to restore the bankrupt finances of the country, had disregarded the Royal instructions, and instituted a local currency as well as having taken the more serious responsibility of varying the inflexible policy of the Government by waiving the pre-emptive right of the Crown[1] to purchase land from

[1] *Vide* his Ordinance of March 26, 1844. For an able justification of this measure the reader is referred to Mr. George Clarke's *Final Report*, 1846, the manuscript of which is in the Hocken Collection at Dunedin. The pre-emptive right was finally abrogated in the Native Land Act of 1862.

the natives, in the hope of removing the growing discontent and of enhancing the revenue from increasing sales.

Defeated in Parliament, the Company's next proceeding was almost humorous in its hysteria. They procured an opinion from Mr. William Burge, in which that gentleman averred, on his reputation as a lawyer, that the British occupation of New Zealand was from the beginning unlawful, and based upon no sound constitutional foundation. This remarkable document they transmitted to Lord Stanley on July 7, in the hope that he would be so awed by it as to cause him to considerably modify the instructions which they were convinced he would, in his normal frame of mind, most certainly tender to Captain Grey, whom he had selected to succeed Governor Fitzroy. Lord Stanley was made of different stuff. He suffered no particular trepidation from Mr. Burge's startling discovery, but merely sent his opinion on to Fitzroy Kelly, Attorney-General, Sir Frederick Thesiger, Solicitor-General, and to Sir Thomas Wilde, who had been the Attorney-General in Lord Melbourne's Cabinet when Captain Hobson was sent out to negotiate the Treaty of Waitangi. These gentlemen averred with equal confidence that neither the reasons advanced by Mr. Burge, nor any other considerations which had occurred to them, furnished them with any well-founded doubt upon the question of Britain's sovereignty in New Zealand.

Reinforced by the opinion of this eminent trio, Lord Stanley sent a copy to the new Governor, telling him to be guided by it in his conduct, at the same time instructing him that if the Company attempted to make capital in the colony out of Mr. Burge's pronouncement, he was to counter the move by giving equal publicity to the joint opinion of the three legal advisers of the Crown.

When Captain Grey reached New Zealand on November 14, he found the country seething with discontent. The European population now numbered approximately 12,000, scattered over widely separated settlements, the natives probably numbered not less than 110,000, many of

whom were in open revolt under Heke and Kawiti; many more were holding their allegiance in the balance.

The mischievous resolutions passed by the Select Committee of the House of Commons in the previous year had ere this percolated to the colony, and fired the doubts of the natives as to the sincerity of the Crown. Governor Fitzroy had used his best endeavours to reassure them, and in offering terms of peace to Heke he made it the first stipulation that the covenants of the Treaty of Waitangi should be binding upon both parties. To these advances Heke had sullenly refused to reply. With the rebels unyielding, obviously Grey's first duty was to ascertain where he stood with the friendlies and the neutrals. For this purpose he summoned a meeting at the Bay of Islands, and amidst the ruins of the wrecked town of Kororareka he delivered to the assembled chiefs one of his characteristic addresses, in which, after warning the people against treacherously assisting the rebels, he said:

> In the meantime, I assure the whole of the chiefs that it is the intention of the Government, most punctually and scrupulously to fulfil the terms and provisions of the treaty which was signed at Waitangi on the arrival of Governor Hobson. I have heard that some persons, evil disposed both towards the Queen of England and the Chiefs of this country, have told you that by your signing that paper you lost your lands. This I deny. By that treaty the protection of the Queen and your possessions are made sure to you. Your lands shall certainly not be taken from you without your consent. You can sell your lands to the Crown, or not sell them, just as you think proper, but, remember, that when once you do sell them, they must be promptly and justly given up.

The professions of the Government's good-will to the natives were renewed, they were told of the Queen's solicitation for their material, moral, and religious welfare, and once more assurances were given that equal justice would be meted out to both Maori and European, to which Tamati Waaka Nēne replied: "It is just."

As the result of this conference Grey felt that he could rely upon the loyalty of the friendly natives, and that this adhesion to the Crown grew out of the fact that they

were, as the Governor expressed it in his Despatch, "Unanimous in desiring protection and support from the Government; that they were quite aware of the advantages conferred upon them by the annexation of New Zealand to the British Empire, and that the large mass of the inhabitants sincerely desired to see peace and tranquillity restored, so that the Government might be invested with that weight and authority which is essentially necessary to enable it properly to perform its functions."[1]

With the position of parties both in England and in the colony thus firmly determined, it appeared that the Treaty of Waitangi would now be accepted as the basis of a settlement of the colony's affairs; but these sanguine expectations were speedily doomed to disappointment. By one of those inexplicable revolutions which not infrequently occur in the wheel of political fortune, Sir Robert Peel's Ministry was ousted from office in the latter part of June. Lord John Russell came back to power, and Lord Howick, who in the meantime had succeeded his father as Earl Grey, became Chief Secretary for the Colonies in the new administration.

As Lord John Russell had so recently modified his views upon the subject of the Treaty of Waitangi as to admit of his saying that Maori rights in land narrowed down to territory "in actual occupation by them," the way had been cleared by which his Secretary for the Colonies might put into operation his pet theories for the nullification of the Treaty of Waitangi.[2] This opportunity came to him when it fell to his lot to prepare a new Constitution for the youngest of Britain's possessions.

New Zealand had now been a colony independent of New South Wales for the better part of five years, during which time, under the advantages of a more or less settled government, she had made phenomenal progress. So rapid had been her development, so steadily had her

[1] *Vide* his Despatch to Lord Stanley, December 10, 1845.

[2] In this he was further assisted by the fact that Mr. Hawes, who had been prominent with him in the interests of the New Zealand Company, became his Under-Secretary, and Mr. Buller became Lord-Advocate.

population increased, that in the opinion of many of her most influential Colonists the time had arrived when they should be invested with all the privileges of responsible government. With this democratic movement the Governor was in entire sympathy and aided the aspirations of the people by the weight of his influence. The implicit confidence which the Home authorities at this period placed in Grey's discretion doubtless led them to more readily acquiesce in the liberalisation of the Charter granted in 1840, and in conveying to the Governor the determination of Parliament, the Colonial Secretary explained that the necessity of a fundamental change from the position created when Captain Hobson was appointed had been insisted on by all parties to the discussion, there being an almost equally unanimous concurrence among them that the change should be in the direction of calling the settlers to participate much more largely in the business of legislation and local self-government. He accordingly enclosed on December 23 (1846) the Imperial Act, and the Royal Instructions which were to give effect to this determination.

The functions of a governor in a Crown Colony are many and various, and Grey's receipt of this Despatch was perhaps as picturesque as any event in his romantic life. There was insurrection at Whanganui—a reflex of Heke's rebellion in the north—whither Grey had gone to aid in its quelling, and he was watching from a hill-side a skirmish between the troops and the insurgents when the Chief Secretary's communication was handed to him. He sat down upon the grassy bank, and with the crack of rifles and the hiss of bullets ringing in his ears he calmly read the fateful document. What the Governor's feelings were when he perused the Charter we need not stay to enquire. Fortunately he had been given a discretionary power as to when it should take effect, and he did not wait long before he determined that its indefinite suspension was inevitable. Grey's brief experience in New Zealand, as well as his innate love of justice, had taught him to regard the Treaty of Waitangi as the sheet-anchor of the colony's settlement, upon the faithful observance

of which it was alone possible to maintain peace with the Maori.

In two vital particulars the new Charter fatally traversed the treaty, and one can only marvel, in the face of the obvious meaning which attaches to the plain words of the compact, how any British Minister could satisfy himself with the sophistry indulged in by the Colonial Secretary. A cardinal omission was detected by the Governor in the fact that no provision was made for the representation of the Maori race in the contemplated Parliament, to which, as British subjects, they were entitled; but worse than all, Earl Grey had again promulgated his strangely perverted opinions upon the subject of native ownership of lands. The Charter was covered by a lengthy Despatch in which the Chief Secretary elaborated his views, and in order that those views may not suffer by condensation they are here quoted at length. After adverting to the manner in which the various heads of his instructions had been classified, he proceeds:

Believing that the instructions, as thus prepared,[1] will be found to convey their meaning perspicuously and completely, I abstain from any attempt to recapitulate or explain their provisions. I turn to other topics on which it seems indispensable that on the present occasion I should convey to you explanations, for which, of course, no appropriate place could be found in the legal instruments already mentioned. I advert especially to what relates to the aborigines of New Zealand and the settlement of the public lands in those Islands. I cannot approach this topic without remarking that the protracted correspondence to which it has given rise, the public debates and resolutions which have sprung from it, and the enactments and measures of your predecessors in the Government, have all contributed to throw into almost inextricable confusion the respective rights and claims of various classes of individuals amongst the inhabitants of New Zealand, to render very embarrassing the enquiry in which you must doubtless be engaged respecting the line of conduct which Her Majesty's Government expect you to pursue, and at the same time to make it almost impossible for us to determine with any confidence what that conduct ought to be, and

[1] For a critical analysis of Earl Grey's policy at this period, the reader is referred to L. A. Chamerovzow's work, *The New Zealand Question*, 1848.

how far, in a state of affairs so complicated, it is possible now to act upon the principles to which, in the absence of these difficulties, I should have prescribed your adherence. I will not attempt any retrospect of those documents and proceedings; I should be but adding to the perplexity which I acknowledge and regret. It will be my attempt rather to explain, as briefly as the nature of the subject admits, what is the policy which, if we were unembarrassed by past transactions, it would be right to follow, and which (so far as any freedom of choice remains to us) ought still to be adopted, regarding the right of property in land which should be acknowledged or created, more especially as affecting the aborigines of New Zealand.

I enter upon this topic by observing that the accompanying statute, 9th & 10th Vict., ch. 104, sec. 11, repeals the Australian Land Sales Act, as far as relates to the lands situate in New Zealand. Thus there is a complete absence of statutory regulation on the subject. The Queen, as entitled in right of her Crown to any waste lands in the colony, is free to make whatever rules Her Majesty may see fit on the subject. The accompanying Charter accordingly authorises the Governor to alienate such lands. The accompanying instructions direct how that power is to be used. I proceed to explain the motives by which those instructions have been dictated.

The opinion assumed, rather than advocated, by a large class of writers on this and kindred subjects is, that the aboriginal inhabitants of any country are the proprietors of every part of its soil of which they have been accustomed to make any use, or to which they have been accustomed to assert any title. This claim is represented as sacred, however ignorant such natives may be of the arts or of the habits of civilised life, however small the number of their tribes, however unsettled their abodes, and however imperfect or occasional the uses they make of the land. Whether they are nomadic tribes depasturing cattle, or hunters living by the chase, or fishermen frequenting the sea-coasts or the banks of rivers, the proprietary title in question is alike ascribed to them all.

From this doctrine, whether it be maintained on the grounds of religion or morality, or of expediency, I entirely dissent. What I hold to be the true principle with regard to property in land is that which I find laid down in the following passage from the works of Dr. Arnold, which I think may safely be accepted as of authority on this subject, not only on account of his high character, but also because it was written, not with reference to passing events, or to any controversy which was at that time going on, but as stating a principle which he conceived to be of general application:

"Men were to subdue the earth: that is, to make it by their labour what it would not have been by itself; and with the

labour so bestowed upon it came the right of property in it. Thus every land which is inhabited at all belongs to somebody; that is, there is either some one person, or family, or tribe, or nation who have a greater right to it than any one else has; it does not and cannot belong to anybody. But so much does the right of property go along with labour that civilised nations have never scrupled to take possession of countries inhabited by tribes of savages—countries which have been hunted over, but never subdued or cultivated. It is true, they have often gone further, and settled themselves in countries which were cultivated, and then it becomes a robbery; but when our fathers went to America, and took possession of the mere hunting grounds of the Indians—of lands on which man had hitherto bestowed no labour—they only exercised a right which God has inseparably united with industry and knowledge."

The justness of this reasoning must, I think, be generally admitted, and if so, it can hardly be denied that it is applicable to the case of New Zealand, and is fatal to the right which has been claimed for the aboriginal inhabitants of those islands to the exclusive possession of the vast extent of fertile but unoccupied lands which they contain. It is true the New Zealanders, when European settlement commenced amongst them, were not a people of hunters: they lived, in a great measure at least, upon the produce of the soil (chiefly perhaps its spontaneous produce) and practised to a certain extent a rude sort of agriculture. But the extent of land so occupied by them was absolutely insignificant when compared with that of the country they inhabited; the most trustworthy accounts agree in representing the cultivated grounds as forming far less than one-hundredth part of the available land, and in stating that millions of acres were to be found where the naturally fertile soil was covered by primeval forests or wastes of fern, in the midst of which a few patches planted with potatoes were the only signs of human habitation or industry. The islands of New Zealand are not much less extensive than the British Isles, and capable probably of supporting as large a population, while that which they actually supported has been variously estimated, but never, I believe, as high as 200,000 souls. To contend that under such circumstances civilised men had no right to step in and take possession of the vacant territory, but were bound to respect the proprietary title of the savage tribes who dwell in but were utterly unable to occupy the land, is to mistake the grounds upon which the right of property in land is founded. To that portion of the soil, whatever it might be, which they really occupied, the aboriginal inhabitants, barbarous as they were, had a clear and undoubted claim; to have attempted to deprive them of their patches of potato-ground, even so to have occupied the territory as not to leave them ample space for shifting, as was their habit, their cultivation from one

spot to another, would have been in the highest degree unjust; but so long as this injustice was avoided, I must regard it as a vain and unfounded scruple which would have acknowledged their rights of property in land which they did not occupy; it is obvious that they could not convey to others what they did not themselves possess, and that claims to vast tracts of waste land, founded on pretended sales from them, are altogether untenable. From the moment that British dominion was proclaimed in New Zealand, all lands not actually occupied in the sense in which alone occupation can give the right of possession, ought to have been considered as the property of the Crown in its capacity of trustee for the whole community, and it should thenceforward have been regarded as the right, and at the same time the duty of those duly authorised by the Crown, to determine in what manner and according to what rules the land hitherto waste should be assigned and appropriated to particular individuals. There is another consideration which leads to the same conclusion. It has never been pretended that the wide extent of unoccupied land, to which an exclusive right of property has been asserted on behalf of the native inhabitants of New Zealand, belonged to them as individuals, it was only as tribes that they were supposed to possess it, and granting their title as such to have been good and valid, it was obviously a right which the tribes enjoyed as independent communities—an attribute of sovereignty, which, with the sovereignty, naturally and necessarily was transferred to the British Crown. Had the New Zealanders been a civilised people this would have been the case—if these islands, being inhabited by a civilised people, had been added either by conquest or by voluntary cession to the dominions of the Queen, it is clear, that according to the well-known principles of public law, while the property of individuals would have been respected, all public property, all rights of every description which have appertained to the previous sovereigns, would have devolved, as a matter of course, to the new sovereign who succeeded them. It can hardly be contended that these tribes, as such, possessed rights which civilised communities could not have claimed.

Such are the principles upon which, if the colonisation of New Zealand were only now about to begin, it would be my duty to instruct you to act; and though I am well aware that in point of fact you are not in a position to do so, and that from past transactions a state of things has arisen in which a strict application of these principles is impracticable, I have thought it right that they should be thus explicitly stated in this Despatch (as they are in the Royal instructions to which it refers), in order that you may clearly understand that, although you may in many respects be compelled to depart from them, still you are to look to them as the foundation of the policy which, so far as it is in your power, you are to pursue.

The imperfect information which alone at this distance I can hope to obtain as to the actual state of affairs in New Zealand, renders it impossible for me to venture to prescribe to you how far you are to go in attempting practically to act upon the principles I have laid down. I should infer from your own Despatches, as well as from those of your predecessors, that the right of the Crown could not now be asserted to large tracts of waste land which particular tribes have been taught to regard as their own. It appears that you have found it expedient to admit these pretentions to a considerable extent; and having done so, no apparent advantage could be suffered to weigh against the evil of acting in a manner either really or even apparently inconsistent with good faith. While, however, you scrupulously fulfil whatever engagements you have contracted, and maintain those rights on the part of the native tribes to land which you have already recognised, you will avoid as much as possible any further surrender of the property of the Crown. I trust also that the evil which would otherwise arise from the concessions already made, may to a great degree be neutralised by your strictly maintaining the exclusive right of the Crown to purchase land from the native tribes to which it has been assumed that it belongs. This right, resting as it does not only upon what has been called the "Treaty of Waitangi," but also upon the general and long-recognised principles of national law, is one so important that it ought almost at all hazards to be strictly enforced. To suffer it to be set aside would be to acquiesce in the ruin of the colony, since it would be fatal to the progressive and systematic settlement of the country. It is by the sale of land at more than a nominal price that its appropriation to individuals in allotments in proportion to their power of making use of it can alone be secured. It is the mode by which, with least inconvenience and difficulty, funds can be raised for emigration and for executing those public works which are necessary for the profitable occupation of the soil; in short, it is the very foundation on which systematic colonisation must be based. But if the native tribes are permitted to sell large tracts of land to individuals for a mere nominal consideration, it is obvious that so much land will be thrown upon the market as entirely to defeat the attempt to sell such lands as the Crown may still retain, at a price sufficient to answer the objects of the policy I have described.

The first and most important step which you will have to take with the view of introducing a regular system with respect to the disposal of land, will be to ascertain distinctly the ownership of all the land in the colony. The extent and limits of all which is to be considered as the property either of individuals, of bodies politic or corporate, or of the native tribes, must in the first instance be determined, and the whole of the remainder of the territory will then be declared to be the Royal demesne. The

results of this enquiry must be carefully registered, and a regular record henceforth preserved, showing to whom all lands in New Zealand belong. This measure has been repeatedly and earnestly inculcated on your predecessors, and I cannot too strongly repeat the same injunction.

Chapter XIII. of the Royal Instructions was devoted to placing into legal phraseology the Minister's policy for "the Settlement of the waste lands of the Crown" and Clause 9 of that Chapter more particularly dealt with the method by which the native titles were to be ascertained and recognised.

(9) No claim shall be admitted in the said land Courts on behalf of the Aboriginal inhabitants of New Zealand to any lands situate within the said islands, unless it shall be established, to the satisfaction of such Court, that either by some Act of the Executive Government of New Zealand as hitherto constituted, or by the adjudication of some Court of competent jurisdiction within New Zealand, the right of such aboriginal inhabitants to such lands has been acknowledged and ascertained, or those from whom they derived the title, have actually had the occupation of the lands so claimed, and have been accustomed to use and enjoy the same, either as places of abode or tillage, or for the growth of crops, or for the depasturing of cattle, or otherwise for the convenience and sustentation of life, by means of labour expended thereon.

The newspapers in England which supported the New Zealand Company published with undisguised exultation Earl Grey's Despatch, and hailed him as a Daniel come to judgment.[1] The Maoris regarded the matter in quite a different light. Here they were being asked to submit for ratification, by an extraneous authority, their lands which they and their forefathers had fought for, and which they had ever guarded with a jealous care that only death itself could terminate; lands which they had been told by Captain Hobson and the Missionaries were to be theirs to loose or to hold as they pleased; lands of which the Treaty of Waitangi had solemnly recognised them as already the indisputable owners. Was this then the much vaunted honour of the Queen? was this to be the unhappy

[1] One writer declared that, "by Earl Grey's Constitution the humbug Treaty of Waitangi is very properly laid on the shelf." Another referred to it as "sweeping away all the Treaty of Waitangi nonsense."

end of all her high-sounding promises? The fire of indignation ran through the Maori veins as they contemplated the deception; the rumble of discontent grew as the tidings spread; the breath of battle was in the air.

The position of the Governor was delicate in the extreme, and probably only two things stood at this critical juncture between the colony and war—the Maori confidence in Grey, and Grey's confidence in himself. "What was I to do indeed?" he afterwards said. "My instruction was not alone that of the Colonial Office; but the Constitution had been sanctioned by Parliament. A man's responsibility in the larger sense is, after adequate deliberation, to proceed as he determines to be just and wise. If he has to decide, not for himself only but for others, unto future generations, there lies his course all the more. There was one clear line for me, simply to hang up the Constitution, and intimate to the Home authorities my ideas about it." In accordance with this decision he wrote on August 20 (1847) to his chief, describing with that directness of which his pen was capable the ferment into which this impossible statesmanship had thrown the country.

I have to state to Your Lordship that within the last few days I have received alarming accounts from various quarters of the island regarding the excitement created in portions of the country most densely inhabited by natives, upon the subject of the introduction of the new Constitution into this country, and the steps that may be taken regarding the registration of their lands. I am not yet in a position that would enable me to state whether actual insurrection, upon an extensive scale is to be immediately apprehended; but I cannot entertain any doubt that the country is in a very critical state. I will lose no time in taking such measures as are in my power to quiet the apprehensions which at present exist, and I will also delay for some time the introduction of the proposed Constitution, but I beg again earnestly to press upon your Lordship the advantages which would result from in so far modifying the proposed Constitution as to leave the Governor the power of being able certainly to promise the natives that he will enact any measures which they may request as essential to their interests, and which the Governor may also consider to be absolutely requisite to secure the tranquillity of the country.

A portion of the Governor's measures to "quiet the apprehensions" of the Maoris was to despatch Captain Sotheby, then in command of H.M.S. *Racehorse*, to visit the northern chiefs, and aided by the ever loyal Waaka Nēne he assured them, "on the authority of His Excellency the Governor, that there was no truth in the report that the Government claimed all land not under tillage." Subsequently this officer invited Earl Grey to reflect upon the rapidity with which this report had spread through the North Island, and the dissatisfaction which it had excited, "even in the minds of those chiefs who had hitherto been friendly to the British and who had fought on our side."

From old Te Wherowhero, of the Waikato, came the following characteristic protest to the Queen, whose honour he would not impugn, whose word he would accept:

> O Madam the Queen, hearken to our words, the words of all the chiefs of Waikato..
>
> May God grant that you may hold fast our word, and we your word for ever. Madam listen, news are going about here that your Ministers are talking of taking away the land of the Native without cause, which makes our hearts dark. But we do not believe this news, because we heard from the first Governor that the disposal of the land was with ourselves. And from the second Governor we heard the same words, and from this Governor. They have all said the same. Therefore we write to you that you may be kind to us, to your friends that love you. Write your thoughts to us, that peace may prevail amongst the natives of these Islands.[1]

In this dignified appeal the chief was joined by Bishop Selwyn, Archdeacon Maunsell, and Chief Justice Martin in the colony, and by the Wesleyan Mission Committee in England, who employed the searching pen of Dr. Beecham to voice their protest.

How the Bishop regarded the proposals of the Chief Secretary may be judged from the following passage in

[1] Te Wherowhero, who had refused to sign the Treaty of Waitangi, was greatly influenced by Governor Grey, and this petition is interesting as showing that the chief was beginning to recognise the sovereignty of the Queen as the accepted order of things.

a letter which he subsequently wrote to his friend, the Rev. E. Coleridge, in England: "If Lord Grey's principles had been avowed by the Governor as the rule of his policy, the safety of the English settlements could not have been guaranteed for a single day."

Archdeacon Maunsell, who in 1840 had informed Captain Hobson that the Missionaries had committed themselves to the promotion of the Treaty of Waitangi only because of their unshaken faith in the integrity of the British Government,[1] was at least entitled to point out that ever since the treaty was signed the conduct of the Maori towards the British had been marked by a spirit of chivalry, of friendship, and of good faith. "Why, then," he asked, "does the statesman of a mighty nation seek to confiscate the guaranteed possessions of our friends and allies?" If such should ever happen, his letter concluded, there could be no alternative but for the Missionaries in sorrow to leave the country, broken and discredited men.

Nor was the kindly, conscientious Martin less emphatic. In a pamphlet, "England and the New Zealanders," he discusses the danger of thus shattering the native confidence in Britain's honour. "In particular," he states, "those who have received Christianity are disposed to look up to us for guidance and government. But let the plan of confiscation or seizure be once acted on, and all this will be at an end. The worst surmises of the natives will have become realities. To them we will appear to be a nation of liars."

[1] "As was anticipated, the chiefs would not enter into the treaty without the advice of their religious instructors. The Wesleyan chiefs said, in effect, to their Missionaries: 'We do not know the Queen of England, but we know you, and can trust you. If you say that the British Government speaks true about the land, we will believe you, for we know you will not deceive us.' The Society's Missionaries, understanding that the primary object of the British Government was to throw the shield of protection over the New Zealand people, and believing that the measure proposed was the best for preserving the natives from the evils by which they were threatened, could not hesitate to assure their people, that, when once the faith of the British Government was pledged, it would be maintained inviolate."—*Vide* Wesleyan Mission Committee's Letter to Earl Grey, 1848.

The Wesleyan Mission Society embodied their views in a memorial, which they subsequently deemed worthy of publication,[1] wherein they justified their right to question the propriety of Earl Grey's policy, not only because of the prestige and influence of their Mission, but because that prestige and influence had been solicited in the interests of the Treaty of Waitangi by Captain Hobson, at a time when his success without it was impossible. They explained that their solicitude upon the subject had been greatly increased, if not wholly produced by the flood of letters they had received from their Missionaries in New Zealand, expressing the state of alarm into which they had been thrown by the publication of his Lordship's Despatch and Instructions, and which in their opinion affixed a meaning to the Treaty of Waitangi very different from that in which it was understood by the parties principally concerned in its execution. Being apprehensive that any attempt to carry what they regarded as a new interpretation of the treaty into effect, would result in the most disastrous consequences, they were constrained to make such representations upon the subject as they had reason to hope would avert the evils which they feared. They then proceeded to set out that at the commencement of the proceedings adopted by Her Majesty's Government for founding a colony in New Zealand, they distinctly understood that the previous recognition of the independence of New Zealand by the British Government having taken the country out of the category of barbarous tribes and people without a national character or national rights, the ordinary course pursued in colonisation would not be adopted in its case, but that New Zealand would be negotiated with as an Independent State, and that the British Crown would not take anything from the Aboriginal proprietors which was not ceded on their part by fair and honourable treaty. In support of this view, they quoted at length from Lord Normanby's instructions to Captain Hobson, in 1839 and from the subsequent correspondence

[1] Correspondence between the Wesleyan Missionary Committee and the Right Hon. Earl Grey, 1848.

with him, when that officer sought a greater amplification of important points. On the authority, then, of the noble gentleman formerly at the head of the Colonial Department, they claimed that they were not deceived when they understood that the cession of sovereignty in New Zealand was not to involve the surrender of territory, either in whole or in part; that the cession to the Crown of such waste lands as might be progressively required for the use of the settlers should be subsequently obtained by fair and equal contracts with the natives, and that no lands were to be claimed for the Crown in New Zealand, except such as might be obtained by purchase from the natives, or by their own free consent. They detailed the overtures which Captain Hobson made to their Missionaries in 1840, when, " in accordance with instructions he had received from the highest authority in the realm," he requested their assistance in effecting the negotiation with which he had been entrusted. The Missionaries at this time, the Committee pointed out, had not read Captain Hobson's instructions, for they had not then been published, but they fully understood the claims of the natives upon the soil of New Zealand, and the point upon which they had to satisfy themselves was whether the proposed treaty was designed to admit and confirm those claims in the full and unqualified sense in which they were made. The Missionaries knew that the Maoris claimed the *entire* soil of New Zealand.[1] They knew that the entire country was divided amongst the several tribes, that the boundaries of every property were accurately defined, and the proprietorship so vested in each tribe that all the members of the tribe had a beneficial interest therein. They therefore knew that at the time the Treaty of Waitangi was signed there was no land in New Zealand without an owner, and which

[1] In a letter received at the Mission House after the Committee's Memorial had been prepared, the Rev. Thomas Buddle, writing from Auckland, on July 3, 1847, remarked in reference to lands having no native claimants: " No such lands have yet been discovered in this Island. I question much whether there is an acre that has no owner." The testimony of other Missionaries in the same direction, was, the Committee asserted, " clear and express."

would under the principles of public law, be automatically transferred to the Crown.

"In the view, therefore, of both the Missionaries and the natives," they said, "the sovereignty and the land were two entirely distinct things, and to preserve the latter intact, while they surrendered the former, was the great solicitude of the natives. From Captain Hobson the Missionaries received the most satisfactory explanation of the terms of the treaty. It dwelt explicitly on both the sovereignty and the land, and the interpretation which the Missionaries were authorised to give of it was that, while the *entire* sovereignty should be transferred to the British Crown, the *entire* land should be secured to the natives. Most certainly the Missionaries received the fullest assurance that, in surrendering the sovereignty, the natives would not by that act surrender their original claims upon any part of the soil. In this sense the chiefs themselves understood the treaty, as it was propounded to them. They clearly comprehended its two main features as explained in their own figurative style, that 'the shadow of the land,' by which they meant 'the sovereignty,' would pass to the Queen of England, but that the 'substance,' meaning the land itself, would remain with them."

But the Missionaries were not alone the source from which the Committee proved the correct interpretation of the treaty. The witnesses who had given evidence before Earl Grey's own Committee in 1844 were marshalled to their support, the official Despatches were quoted to the same end, even those of Lord John Russell being referred to as "warranting the conclusion that his Lordship designed the treaty should be faithfully observed, in the sense in which it was understood by the natives and Missionaries of both the Church and Wesleyan Societies." To these was added the invaluable testimony of Lieutenant Shortland, who had been in closest association with Captain Hobson during the treaty negotiations, who had been privileged to administer the affairs of the colony under it, and who from his close official connection with it was peculiarly the man able to say what it meant and what it did not mean. Shortly before his return to England, the Select Committee of the House of Commons had issued their report upon "the State of New Zealand and the proceedings of the New Zealand Company," and so completely

did that report misrepresent, in Mr Shortland's opinion, the true position of affairs, so harmful did he deem the resolutions which accompanied that report, that he felt in duty bound to protest to Lord Stanley against the needless perversion of the facts. During a lengthy and dispassionate statement of the circumstances surrounding the procuration of the treaty—than whom no one knew them better—Mr. Shortland, writing from his quiet retreat at Torquay, dealt with especial emphasis upon the relation of the sovereignty to the land:

> Respecting the cession of the sovereignty to the Crown by the aborigines without a reciprocal guarantee to them of the perfect enjoyment of their territorial rights, I do not hesitate to say, such a proposition would not for a moment have been entertained by the natives, who, during the whole proceedings of the Government at the first establishment of the colony, manifested a feeling of great anxiety and mistrust in regard to the security of their lands. Of this I could produce many instances did space permit, but will content myself with noticing that the Church and Wesleyan Missionaries possessing, as they deservedly did before the assumption of sovereignty by Her Majesty, the unlimited confidence of the natives, incurred by their aiding the local Government to effect the peacable establishment of the colony, the suspicion of the aborigines, who frequently upbraided the Missionaries with having deceived them, saying, "Your Queen will serve us as she has done the black fellows of New South Wales; our lands will be taken from us, and we shall become slaves." How then could the colony have been founded with the free and intelligent consent of the native owners of the soil, on any other terms than those laid down by the Treaty of Waitangi, viewed in the light in which it has always been understood and acted on by the local Government.

With these and many similar pieces of unimpeachable evidence did the Committee press upon the Colonial Secretary the conviction that their reading and understanding of the treaty was the only one which its "large words," as Lord Stanley had termed them, would bear. Earl Grey relied upon the astute pen of Mr. Herman Merivale, his new Under-Secretary to release him from the horns of the dilemma upon which the cold reasoning of the Committee had impaled him. This he did by referring the memorialists back to an obscure phrase in the Royal

Instructions, which provided that no native claim to land would be recognised unless the title had previously been acknowledged and ascertained, "by some act of the Executive Government of New Zealand as then constituted or by the adjudication of some court of competent jurisdiction." The Treaty of Waitangi was now admitted, and even asserted by the Under-Secretary to be "unquestionably an act of the Executive Government," and therefore it followed that nothing that was guaranteed by the treaty was imperilled by the Instructions. With a wealth of argument upon phases of the issue which were not directly raised by the Memorial,[1] Mr. Merivale was at least able to assure the Committee that the Government intended and always had intended to recognise the treaty, as they believed, in the same sense in which the Committee recognised it. "They recognise it in both its essential stipulations, the one securing to those native tribes, of which the chiefs have signed the treaty, a title to those lands which they possess according to native usage (whether cultivated or not) at the time of the treaty, the other securing to the Crown the exclusive right of extinguishing such title by purchase." Considerable unction was claimed for his chief by the Under-Secretary, in that he had directed Governor Grey to proceed with all circumspection in giving effect to the instructions of the Department, but he failed to observe that even in his widened interpretation of the treaty, he still limited the rights in native lands to those tribes whose chiefs had signed the treaty. Those who like Te Heuheu, and Te Wherowhero had maintained their independence might still have been subject to spoliation had this view become the accepted interpretation of the Department, and those who were keenly interested in the fate of the colony were not slow to place this construction upon it. The immediate necessity for anxiety upon this point was, however, obviated by the prompt suspension of the Charter by Governor Grey, and

[1] It is instructive to observe that the treaty is no longer described as "what has been called the Treaty of Waitangi," as it was in Earl Grey's Despatch, but is now spoken of with respect by Mr. Merivale as "The Treaty of Waitangi."

UNIV. OF
CALIFORNIA

EARL DERBY.

Formerly Lord Stanley.

UNIV. OF
CALIFORNIA

upon the submission by him to Downing Street of a more liberal and flexible Constitution, drafted upon the slopes and amidst the snows of Ruapehu.

Ere the brewing storm in New Zealand had burst, the crisis had come in the life of Lord John Russell's Ministry, who were defeated on their Militia Bill. They were succeeded by the Stanley of old, who in the person of Lord Derby, became Premier, with Sir John Pakington as his Colonial Secretary. To him fell the duty of giving legislative effect to the more workable and equitable Constitution drafted by Governor Grey, and when the Wesleyan Committee again approached the Colonial Office with the regretful assurance that the reply vouchsafed to them by the noble gentleman who had just vacated the Chief Secretaryship " was less satisfactory to the people of New Zealand than it had appeared to themselves," Sir John was able to convey to them through the Earl of Desart the gratifying intelligence that in the Bill then before the House there was every provision for the full and complete recognition of the principles for which they had so resolutely contended.

Concerning the Third Clause of the treaty, little need be said. By this covenant the Queen undertook, in consideration of the cession of sovereignty and the granting of the pre-emptive right of purchase of land, to extend to the Maori race her Royal protection, and impart to them all the rights and privileges of British subjects. Of the manner in which this undertaking has been fulfilled, the Maoris have never complained, and they have never had just grounds for complaint. There is no colour line drawn against the New Zealander in New Zealand. Our courts are as open to him as to any one, and whether he be plaintiff or defendant, the same even-handed justice is meted out to him. He travels upon our railways, he rides upon our cars, he sits in our theatres on equal terms with his *Pakeha* friend. His children are educated in our schools and his sons are absorbed into our Civil Service, his chiefs sit at the Governor's table, and his elected representatives sit in Parliament, where their voice is respected and their

vote is valued. The professions are open to him, and there is no position in Church or State which he may not fill. No more is demanded of a Maori than of a European. His passport to society is his good behaviour, his participation of civil rights is governed by his disposition to become a law-abiding citizen.

Only one question now remains to be discussed. In what relation did those chiefs stand to the Treaty of Waitangi who refused to sign it? It has never been contended that all the chiefs were invited to meet Captain Hobson at Waitangi, nor that all were solicited by his agents to sign the treaty, nor that all who were so solicited agreed to affix their signatures to the document. There was a residuum, which included some of the most powerful chiefs in the land, who either had no opportunity of subscribing their allegiance to the Crown, or who for reasons of their own held aloof. How were these non-participants affected by the compact?

This question was first raised in its practical application by Taraia, a Tauranga chief, who in December 1842 committed what is believed to have been the last act of cannibalism perpetrated in New Zealand. Taraia was not a signatory to the treaty, and the Government were sorely exercised as to whether they were justified in claiming jurisdiction over him. An effort had been made by the Aborigines' Protection Society in London to define the status of these independent chiefs, by submitting the question to Mr. Joseph Phillimore, an eminent English lawyer, and Mr. Phillimore had given them a qualified opinion that if there were any chiefs who had preserved their independence by refusing to become parties to the treaty, then such chiefs *may* not be bound by its obligations, and *may* be entitled to distinct and separate consideration. But clearly, in an abstract sense, there could be no such qualification to the unaltered status of these men. They were still chiefs of an Independent State so far as they were concerned, retaining inviolate their *mana*, and refusing to be compromised by the concessions made by their fellow chiefs.

The Government, then controlled by Captain Hobson, did not share even the qualified view entertained by Mr. Phillimore and those who thought with him. They presumed all natives of New Zealand now to be British subjects and determined that Taraia must be punished. This valiant determination was not, however, given final effect, not because the authorities were dubious of its justice, but because they had become uncertain as to its practicability; so much so that they subsequently deemed it prudent to limit their interference to a warning to that chief, that he might expect to incur the anger of the Governor upon a repetition of his offence. In Taraia's case this reprimand was sufficient to quiet him, but only a few months later Tongoroa, another Tauranga chief, made war upon his neighbours, and the sore which looked as though it had healed was suddenly reopened. Lieutenant Shortland, who had now assumed the post of Acting-Governor, proceeded to Tauranga to arrest the disturber of the peace, but before the apprehension could be effected his accumulating difficulties were further increased by an unexpected communication from Mr. Clarke, the chief Protector of the Aborigines, and Mr. Swainson, the Attorney-General. Both these gentlemen had previously endorsed the contemplated arrest of Taraia, but to the amazement of the Acting-Governor they informed him that more mature reflection had caused them to reverse their opinion, and that they now considered the arrest of Tongoroa would be illegal.

Hurrying back to Auckland, Shortland called a meeting of his Council, and there sought some enlightenment as to this new view-point of the Maori status under the treaty. Amongst those consulted was necessarily Mr. Clarke, the erstwhile Missionary, and now Chief Protector of the Aborigines, whose close and constant intercourse with all the tribes gave him the most favourable facilities for gauging the strength and direction of the native aspirations. In the course of his examination Mr. Clarke was asked:

(1) Do the natives who signed the Treaty of Waitangi acknowledge themselves to be British subjects ?

To which he replied :—The natives who signed the Treaty of Waitangi, having been solemnly assured by Her Majesty's representative, the late Captain Hobson, that they should in the fullest sense of the term be entitled to all the privileges of British subjects, consented to be considered as such, with a full understanding that their allegiance depended upon the British Government fulfilling their engagements in that treaty.

(2) How far, and to what extent, do the various tribes in New Zealand acknowledge the Queen's sovereignty ?

To this Mr. Clarke's answer was :—The natives alone who signed the treaty acknowledge the Queen's sovereignty, and that only in a limited sense. The treaty guaranteeing their own customs to them, they acknowledge a right of interference only in grave cases, such as war and murder, and all disputes and offences between themselves and Europeans, and hitherto they have acted on this principle. The natives who have not signed the treaty consider that the British Government, in common with themselves, have a right to interfere in all cases of dispute between their tribes and Europeans, but limit British interference to European British subjects.

(3) In your communications with the natives, have you asserted that they are British subjects, and the right of the Government to interfere with them as such ? and (4) On making that assertion how far has it been acquiesced in ? :—In all my communications with the natives I have been instructed to assert, and have always asserted, that they are British subjects, and amenable to British authority, in which very few, even those who signed the treaty, would acquiesce, save in matters relating to disputes or depredations upon each other (viz. differences between Europeans and natives).

(5) If the Government were to admit that any tribe or tribes of New Zealanders were not British subjects, and were not amenable to the laws, what effect do you think that admission would have on the peace and future colonisation of the colony ? :—The admission that the tribes of New Zealanders were not amenable to British law, would, I am apprehensive, be destructive to the interests of the natives and the prosperity of the colony. It would be made use of by designing men to embarrass the Government, to embroil the natives with each other and with the Government, which must be alike injurious to both. Her Majesty's Government having seen fit to colonise New Zealand, it is now an act of humanity to both natives and Europeans to consider the whole of the tribes of New Zealand as British subjects, and to use every honourable and humane means of getting the tribes universally to cede the sovereignty where it has not been ceded.

(6) Supposing that we should treat as British subjects, by

force, those tribes, who have uniformly refused to cede the sovereignty to Great Britain, should we be keeping faith with the principles we professed when we originally negotiated for the cession of the sovereignty ? :—In treating those tribes as British subjects by force who have refused to cede the sovereignty to Great Britain, would not only be considered by the natives as a breach of faith with the principles originally professed when negotiating for the sovereignty, but would, I am apprehensive, lead to a destructive war, and although the result would be destructive to the native race, it would be inglorious to the British Government, and at variance with the designs of Her Most Gracious Majesty in adding this interesting people and country to her Dominions.

From the Protector of the Aborigines who only pretended to interpret Maori opinion as he gleaned it in his progress through their *pas* and settlements, the Executive turned to their Attorney-General, Mr. Swainson, for his more recent interpretation of the position as it appealed to the trained mind of a jurist, and Mr. Swainson only put into less direct language the pronouncement of Wiremu Tamihana, the King Maker, who during the hey-day of the King movement scorned the authority of the Queen over his land : " I am chief of Ngati-Haua, which is an independent tribe. My father, Te Waharoa, was chief before me. Neither he, I, or any of my people signed the treaty, therefore we are not bound by it." Mr. Swainson's opinion was as follows :

From the evidence given before the Council by the Protector of the Aborigines (Mr. Clarke), it appears that, as I have already stated, there are numerous tribes who have not ceded their sovereign rights to the Queen, and who do not yet acknowledge her sovereign authority. For the reasons already given, I think it would be consistent neither with justice nor with the principles we professed, viz. that we came here to treat for and not to assume sovereignty, to treat those tribes in all respects as British subjects, and to impose upon them our penal code ; in this opinion, also, the Protector's opinion coincides. I am also of opinion that so numerous are these tribes, and many of them so distant, that were we disposed to do so we have not the power. At the same time, I am persuaded that the benefits of British protection, and the laws administered by British judges, would far more than compensate the natives for the sacrifice of their independence. These benefits, however, I am equally persuaded, can only be obtained on the voluntary surrender by them of their

own sovereign rights, and on their "free and intelligent" submission to British authority. To subjugate them would require a large armed force; but by the employment of persuasion, the influence of example, and the general spread of civilisation among neighbouring tribes, there is ground to expect that they will gradually submit themselves to the operation of British laws. To constantly point out to them the benefits they will derive from doing so, and to impress upon them, to use the language of the Secretary of State, the impossibility of Her Majesty's extending to them an effectual protection unless the Queen be acknowledged as the Sovereign of their country, or at least of those districts within, or adjacent to which Her Majesty's subjects may acquire land or habitations" is the course, I believe, to be most calculated to effect the object of establishing an absolute sovereignty over the whole country."

Though doubtless giving to these expressions of opinion the respectful consideration which was their due, the Acting-Governor decided to assume the responsibility of setting them aside, and following the dictates of his own judgment. To him it seemed that it would be fatally weak to admit in the practical administration of the country the nice line of distinction drawn by the Attorney-General or subscribe to the opinion expressed by Mr. Clarke, "that every honourable and humane means should be used to prevail on tribes to cede the sovereignty where it has not been ceded," as in his judgment this would have been an over-ready admission that they were beyond the pale of the British Crown, and no more effectual means could have been adopted of disseminating the harmful acknowledgment. The troops were accordingly sent to Tauranga, but no arrests were made. Here prudence again prevailed and the officer in charge was instructed only to employ the soldiers "in the general preservation of peace." When these proceedings were reported in due course to Lord Stanley, he warmly endorsed the view adopted by Lieutenant Shortland [1] and as warmly censured Swainson, who

[1] "I do not think it necessary or convenient to discuss with Mr. Swainson the justice or the policy of the course which the Queen has been advised to pursue. For the present purpose it is sufficient to say Her Majesty has pursued it. All the territories comprised within the Commissions for the Government of New Zealand, and all persons inhabiting those territories, are and must be considered as being to all intents and purposes within the dominions of the British Crown."—*Vide* Lord Stanley's Despatch to Acting-Governor Shortland.

was told in the plainest terms that he could not be permitted to entertain the views to which he had given expression, and hold a public office at the same time.

As a matter of abstract reasoning, Lord Stanley was probably wrong, as a matter of practical administration he was probably right, but the correctness of his attitude depended for its success upon the tactfulness of its application. Fortunately New Zealand has, in the main, been blessed with administrators of wide sympathies, and a paternal parliament has generally, though not always given the native race the most indulgent exposition of the treaty. Mistakes may have been made, misapprehensions may have occurred, even technical breaches of the treaty may have been committed, but since the administration of native affairs was handed over to the Colonial Government in 1863 there have been but few instances of flagrant violation of native rights. Prior to this date the care and control of the Maori still vested in the Imperial authorities, even after representative institutions had been granted to the country; and while that condition lasted there was, unhappily, an all too frequent clashing of the two races. With one or two exceptions these conflicts had a common origin in an over-anxious desire on the part of the Europeans to become possessed of native land, as opposed to the deep-founded pertinacity with which the chiefs clung to their ancestral domains. The first of these exceptions was the insurrection of Hone Heke in 1845, which was not in its inception a dispute regarding land, but an undisguised protest against the exercise of the Queen's sovereignty. Land did ultimately play its complicating part in the disruption, but in its initial stages it was the revolt of a volatile man who felt the treaty had carried him further than he intended it should lead him; it was the protest of an ambitious chief who loved notoriety as much as he loved his independence. Heke fell upon what now appears to have been the weak point in Hobson's negotiations; that while he may have, and doubtless did, convey to the natives a clear enough idea of what was meant by the sovereignty of the Queen, he does not appear

to have taken sufficient care to explain with any detail what its possible effects might be. Assuredly he was not endowed with such a mental vision as to foresee all that was to happen, nor to conjure up within his mind all the changes that were inevitable in evolving a State from a condition of barbarism to one of civilisation. One thing, however, must have been obvious both to him and to those who were associated with him, that no government could be organised and carried on in a new country without a revenue adequate for all its varied purposes. Under Lord Normanby's instructions funds were to be temporarily provided from New South Wales, but the permanent revenue was to be raised within New Zealand itself, of which a large part, it was hoped, would be derived from the sale of land. Other sources of income in the way of customs duties and taxation in varied forms must also have been in contemplation, but we have no evidence that Captain Hobson ever took occasion to explain to the people that sovereignty would cost them something; that revenue which had been falling into the hands of the chiefs would be diverted into the coffers of the State, and that with the surrender of their independence they must also surrender the levies which they had been making upon the whalers.

It is conceivable that had this surrender of a means to opulence been clearly contemplated by the chiefs as a part of the colonising scheme those at the Bay of Islands would have been the more easily reconciled to it by the natural expectation that even larger sums would be flowing in to them from the sales of land. If these anticipations ever existed they were doomed to disappointment, for instead of entering upon an active campaign of land-buying the Governor suspended the purchases he should have made, and wasted his money on a site for a town, while the rigid enforcement of the pre-emptive right acquired by the Crown closed the market against the buyers of open country lands. This restriction was felt to be not without its element of injustice; for upon a more critical examination of the terms of the treaty it was found that though the Crown claimed the exclusive right to extinguish the

native title, nothing had been determined as to the price to be paid or as to the time within which the purchase should be made. Thus, chiefs like Heke, who had been in receipt of substantial sums by way of anchorage money from the shipping found their perquisites appropriated by the State, while they derived no compensating benefit from the sale of land.

The first flush of disappointment which surged within the breast of Heke as he contemplated the unexpected effects of the new power was fed by the angry adventurers and thwarted speculators, who, in their chagrin at the interception of their schemes, had no compunction in inciting him to a course which ultimately led to a declaration of hostility against the Queen and to open war against the Crown.

Not so the Waitara war of 1860, which found its origin not so much in a desire to violate the treaty, as in a blundering endeavour to observe its most important provision. The taking up of arms by Wiremu Kingi was not in its spirit rebellion against the Queen's sovereignty, but a reply to the Governor's attempt to divest him of his rights by insisting upon purchasing land from one whom Wiremu contended could not by any application of native law be constituted the owner. There was on the part of the natives the greatest reluctance to resort to arms, their desire being to test the disputed point of ownership before a properly constituted Commission ; but when these overtures were rejected and the Governor held on his headstrong way, they felt there was no course compatible with their high-strung sense of dignity, but to refer the momentous issue to the final arbitrament of war. The story of the Waitara campaign is too well known to need recapitulation here, but in the opinion of many of those skilled in the intricacies of Maori land tenure it was a blunder of the first magnitude, for which Governor Gore-Browne, and not the Colonial Parliament was wholly responsible. If, then, the war was unjust, the confiscation of native land which followed upon the suppression of what was called rebellion was branded with the same injustice.

And just as one wrong perpetuates itself in the form of others, this confiscation has ever since burned deep into the hearts of the Taranaki natives, and led in the early eighties to what is known as the Te Whiti movement. Like his predecessor, Wiremu Kingi, Te Whiti was a much-misunderstood man. For this state of misconception he may have himself been largely accountable, for as a concession to the Maori love of the mysterious he so combined religion with his politics, and dealt so freely in the mystic, that it was frequently difficult to separate intangible prophecy from the things that really mattered in his material policy. But shorn of all its grotesqueness the movement which centred round the Parihaka prophet and his uncle Tohu was not a repudiation of the Treaty of Waitangi, nor was it a revolt against the authority of the Queen. At its base lay the grievance, or the fancied grievance, which was before them every day in the shape of the confiscated lands. There upon the wide Waimate Plains they saw European homesteads whose occupancy was in their eyes a crime against Maori rights. Te Whiti felt he had two things to do. He had to assert his right to those lands, and he had to agitate for justice. He accordingly sent his faithfuls to plough up the fields of the farmers and the lawns of the settlers, in the mistaken hope that he would be able to force the issue before a competent tribunal and there determine who had broken the treaty —the Maori or the *Pakeha*.

The Government of that day saw things differently. They had no desire to exhume the remains of past mistakes with a possibility of being called upon to repair them at a cost of much treasure and more dignity. They preferred to stand upon the settled policy of their predecessors, and instead of sending a Commission to discover what was at the back of the prophet's mind, they sent troops and took him prisoner. Te Whiti may have been a dreamer, he may have been a babbler of vain things, but he was never a rebel, nor the maker of rebels; but for saying "I love my land" he was legislated into rebellion, and made to appear as a criminal.

In the same way the King movement of 1857 only became rebellion when the Crown made it so. Two primary causes operated to call into existence this political power, the creation of Wiremu Tamihana's [1] genius, which for over fifty years was a potent influence in the Maori life of the Waikato. For upwards of fifteen years the colony had been following with more or less exactitude the terms of the treaty, and during this time the State had exercised its power of pre-emption in a manner which the more enlightened Maoris now began to regard with disfavour. When Lord Normanby despatched Captain Hobson to found the colony he anticipated no opposition to the practice of buying land from the natives at a low price and selling it again to the colonists at a large advance on what the Crown had paid. For a time these anticipations were confirmed by results, but now the fathers of the race, jealous of the rapid increase of the Europeans, and alarmed at the equally rapid diminution of their lands, began to adopt a different view. Rather than part for a few shillings with property which they knew would be sold for as many pounds, they determined to exercise their right under the treaty, and refuse any longer to sanction the large transactions in which they had been engaged with the Crown.

Their eyes, too, had been opened by the Waitara war. Here a single individual had embroiled the whole of the Ngati-Awa tribe in a sanguinary conflict with the Government, by insisting upon selling land to which his title was contested. These unauthorised sales, said the chiefs, must cease, and no individual should, by his avarice, have the power to involve the people in war. To crystallise this determination into a practical act of statesmanship Wiremu Tamihana conceived the idea of a Maori King, who was to be, not antagonistic to, nor a substitute for the Queen, but the arbiter and judge in all internal disputes, as well as the mouthpiece as to land which the tribes as a whole were or were not prepared to sell. "I

[1] William Thompson, son of Te Waharoa, known as the Kingmaker.

do not desire to cast the Queen from this Island, but from my piece of land. I am the person to overlook my piece" was how Wiremu Tamihana once publicly stated his attitude towards the Crown. The King movement was thus a Land League and not a rebellion, and as the Maoris had the right to withhold their land from sale if they so pleased, their adherence to this restrictive policy was no more illegal than the establishment of a Trades Union or a Political Association. The movement did not become militant until after the invasion of the Waitara by the British troops, when many of the Waikato natives rose in sympathy with Wiremu Kingi, and the battle followed them back to their gates. Then the authorities began to realise what a compelling truth there was in the maxim of Bishop Selwyn: "Nothing is easier than legally and peacefully to extinguish a native title; nothing is harder than to extinguish a native war."

Worsted, though not disgraced, in the field, the dissatisfied Maoris have since sought to secure the full measure of political justice to which they believe themselves entitled by more constitutional methods. Amongst their dreams has been a native Parliament sitting in the Treaty House, at Waitangi, to approve measures for the betterment of the race, which measures would be afterwards adopted by the Government and given the effect of law. This, however, has been nothing more than a dream. Little better was the *Kotahitanga*, or union, in 1892, of all the tribes in the north, exclusive of the Kingites who still remained loyal to their monarchal authority. The policy upon which this new union was founded was that of inducing the Government to cease purchasing native lands, and to set aside as a reserve for the benefit of the present and all future Maori generations the considerable areas of native land still unsold. Nor was this all. Legislation had been passed, not specially directed against, but not excepting the native race, placing restrictive conditions upon the oyster fisheries of the country, and this the leaders of the movement held to be a breach of the second clause of the treaty, which guaranteed to them not only

the free use and control of their lands and their forests, but of their fisheries also. The deprivation of their right to freely gather food from the sea and the sea-shore was, together with other grievances, sufficient to galvanise them into political activity, and the *Kotahitanga* was formed with the meteoric Hone Heke [1] at its head. The Native Rights Bill was introduced by him and rejected by Parliament, but the movement was not without its fruits, for in 1900 part of their purpose was achieved in the concessions made by the Government in the Native Land Administration Act and the Maori Councils Act.

With the accomplishment of these aims, and the early death of Heke, the *Kotahitanga* has failed to preserve its former vitality; but brief as was its career, it must be recorded of it that in its inception and activities it was, as most Maori movements have been, not an organisation designed to aid in the evasion of the treaty, but rather to insist upon the due observance of its contracts.

Few Legislatures in the world have had a more difficult task than has fallen to the lot of that of New Zealand in legislating for the Maori so as to preserve his nationality, his rights, his liberties, and yet not bar the progress of the European state. That it has been embarrassed times without number by the treaty is undoubted, and therefore it is the more to its credit that the diplomatic bargain which has now held good for the better part of a century should have been so little violated. The treaty has been the broad foundation upon which the intricate structure of native legislation has been reared through all these years; and if there has ever been as there must have been under changing conditions trespass upon the strict letter of the compact, it is safe to assert that this variation has only occurred when Parliament has been honestly satisfied that the wider interests of the State as a whole demanded the departure. At no time has the Legislature been callously unmindful of the true spirit of the treaty, or careless of the great trust imposed upon it as the guardian

[1] A grand-nephew of the chief who led the war of 1845.

of native rights.[1] This commendable endeavour to observe that "justice which is the paramount interest of all men and all Commonwealths" has finally led to a universal acceptance of the treaty by the native race as the basis of their civil and political privileges. So far is this the fact, that to-day the Maori is more insistent upon a due observance of its covenants than is the European. The present generation of natives accept it unquestioningly; and long before the "Old Guard" of objectors had passed away they, too, were beginning to realise that the sacrifice of their independence was more than compensated for by the protection of the British flag. They felt the irresistible sweep of the white tide that had surged upon their shores, and much as they might regret the passing of their ancient *mana*, they were compelled to acknowledge the force of truth in the figurative statement of their diminishing power once propounded to them by Mr. Busby: "How can the little pebble dam the stream? how can the single tree stand against the storm?"

[1] The confiscation of Taranaki lands following upon the Waitara war might be held by some to be an exception to this rule, but that would depend upon the view taken of the justification for the war. The breaches of the treaty, real or alleged, which have occurred in connection with the Waitara war and since, have been vigorously stated by Mr. G. W. Rusden in his *Aureretanga*, published in 1888.

APPENDIX

THE following petitions to the late Queen are interesting as being the more recent protests of the Maoris against what they regard as breaches of the Treaty of Waitangi. The Memorandum and correspondence which follow may be taken as the official answers to the grievances as alleged in the petitions.

The subjoined judgment of the Chief Justice, and the extracts from the other judgments delivered in the Court of Appeal in the case of Tamihana Korokai, October 1912, are of value as affording us the most recent judicial interpretation of the Treaty of Waitangi.

PETITION FROM MAORIS TO THE QUEEN

The Earl of Kimberley to His Excellency Sir A. H. Gordon, G.C.M.G.

DOWNING STREET, *August* 8, 1882.

SIR—I have the honour to transmit to you, to be laid before your Government, a copy of a memorial to the Queen, which was handed to me by certain Maori chiefs, complaining of alleged breaches by the New Zealand Government of the Treaty of Waitangi, with a printed translation of the same, which I received in a letter from the Rev. P. Walsh of Parnell, Auckland. I also enclose a newspaper extract, which gives a brief but fairly accurate account of an interview which I held with these chiefs and several members of Parliament, and others who accompanied them on the occasion.

I request that you will lay these papers before your Government. You will invite them to favour me with any observations they may wish to make in regard to the memorial.—I have, etc.,

KIMBERLEY.

The Hon. Sir A. H. Gordon.

To Her Majesty VICTORIA, the Good Queen of England, and the Empress of India, Greeting.

Go forth, O our messenger, on the soft airs of affection to remote lands, across the ocean that was trodden by Tawhaki,[1] to Victoria, the Queen of England, whose fame for graciousness has extended to all the kingdoms of the world, including New Zealand. O Mother, the receiver of the sentiments of the great peoples and the small peoples under the shade of your authority, Salutations! May the Almighty preserve you on your Throne, and may men applaud you for your goodness to your peoples living in these Islands, who are continually directing their eyes toward you, the mother who is venerated by them.

O Mother, the Queen! on account of the desire to protect these Islands, your father sent hither, in 1840, Captain Hobson. At that time the enlightened administration of England was discovered by us, and the Maori chiefs came to the conclusion that England, in preference to other countries, should be the protector of New Zealand—to protect and cherish the Maori tribes of New Zealand. The conclusion brought about the treaty of Waitangi, and the appointment of the first Governor, Captain Hobson.

In consequence of the ignorance of some tribes, including Hone Heke, the flagstaff was cut down at Maiki, Bay of Islands, for the tribes in question imagined that the flag was the symbol of land confiscation. Nevertheless, there was no blood in the flagstaff which had been cut down, making it needful to raise armies to fight the Maoris. If the Native chiefs had been summoned to a conference at that time, and matters had been explained to them, there would have been no war; but the Europeans flew as birds to make war against Heke, which brought about the blood-shedding of both Europeans and Maoris.

In the year 1860 another evil was brought upon the Maori tribes by the Governor himself, who, without any grounds, drove Wiremu Kingi from his own lands at Waitara, and this war about land renewed the shedding of both European and Maori blood. On this occasion, O Mother, the Queen! the grievous lamentation of this Island was raised, and you recalled, in consequence, Governor Gore-Browne, whose administration closed here. It was said by the Europeans that

[1] Tawhaki, the God-man, whose name frequently occurs in all the ancient mythology of the Maori race.

William King did wrong in opposing the Governor; that if William King and party had appealed to the Supreme Court, the Government act in that case would have been condemned. Hence the knowledge of the Taranaki tribes taking up that opinion, and retaining it up to the capture of Te Whiti and others, who did not oppose in fight the Government when it went with an army to Parihaka, to enkindle Maori strife, thereby endeavouring to find a basis to make the Maoris do wrong, and then confiscate their lands.

In the year 1862, you, O Queen, sent hither Governor Grey to calm down the rain and the wind,[1] so that the sea of both races should be still. Governor Grey possessed much wisdom: he understands the Maori language, also the Maori customs. Notwithstanding, when he came the second time as Governor of these Islands, he rushed hastily away to Taranaki, and gave instructions for road-making on Maori territory, thereby bringing about a war and the slaying of many of both races. In the year 1863 the war was carried into Waikato, and the Maoris throughout the Island were unaware as to the reason why war had been made on the Waikato. Now, O Queen, the Waikatos had formed a land league, in accordance with the Treaty of Waitangi, to preserve their native authority over the land, which principle is embodied in the treaty.

O, the Queen! you do not consider that act of retaining their land to be unjust; but the Government of New Zealand held it to be wrong, inasmuch as war was declared against the Waikatos, and the confiscation of their land followed, although the Waikatos had no desire to fight—the desire came from the Governor and his council. When the Waikatos were overpowered, armies of soldiers went forth to engender strife against the Maoris at Tauranga, at Te Awa-o-te Atua at Whakatana, at Ohiwa, at Opotiki, at Turanganui, at Ahuriri, at Whanganui, at Waimate, and various other places. The motive impelling the projectors of these deeds to execute this work was a desire to confiscate the Maori lands, and to trample under the soles of their feet the Treaty of Waitangi. While these proceedings were being carried out, the weeping people wept, the lamenting people lamented, the agonised people were in agony, the saddened people were in sadness, while they held the Treaty of Waitangi as a basis on which the voice of the Maoris could be made known to you, O Queen.

But the people of New Zealand declared that the fighting and the confiscation of land which brought calamity, and

[1] Rain and wind—figurative expressions denoting wars and tumults.

made your Maori children orphans, were sanctioned by you, O Queen. We did not believe the utterances of the Europeans as to the wrongs we suffered, that they were brought upon us by your queenly authority; but our decision was that such acts were not sanctioned by you, O Queen, whose benevolence towards the Maori people is well known. The disorderly work referred to has been carried into practice, so that a path might be opened up to Europeans to seize Maori lands.

In the year 1881, a new plan was devised by the Government to enkindle strife in respect to the Maoris. Armies were sent to Parihaka to capture innocent men that they might be lodged in prison; to seize their property and their money, to destroy their growing crops, to break down their houses, and commit other deeds of injustice. We pored over the Treaty of Waitangi to find the grounds on which these evil proceedings of the Government of New Zealand rested, but we could find none. Some of the European inhabitants of this Island disapproved of these injurious doings to Maori men; and it was vaguely rumoured that Sir Arthur Gordon, the Governor, refused to approve of these acts. Many other evils have been discovered by our hearts, therefore have we considered right, O Mother, the Queen, to pray that you will not permit increased evils to come upon your Maori children in New Zealand, but to graciously sanction the appointment of a Royal English Commission to abrogate the evil laws affecting the Maori people, and to establish a Maori Parliament, which shall hold in check the European authorities who are endeavouring to set aside the Treaty of Waitangi; to put a bridle also in the mouth of Ministers for Native Affairs who may act as Ministers have done at Parihaka, so that all may be brought back to obey your laws; and to prevent the continued wrongs of land matters which are troubling the Maori people through days and years; and to restore to the Maoris those lands which have been wrongfully confiscated according to the provisions of the Treaty of Waitangi; and to draw forth from beneath the many unauthorized acts of the New Zealand Parliament the concealed treaty, that it may now assert its own dignity.

In this year, 1881, we, O the Queen, built a House of Assembly at the Bay of Islands, and the great symbol therein is a stone memorial, on which has been engraved the articles of the Treaty of Waitangi, so that eyes may look thereon from year to year. Two invitations were sent to the Governor, requesting him to unveil the stone Treaty Memorial. He did not accede to the request. Perhaps his disinclination arose

from the fact that the Europeans had disregarded the principles embodied in the treaty, because in you, O Queen, is vested the sole authority affecting the Waitangi Treaty. Should you authorize, O Mother, the Queen, the appointment in England of a Royal English Commission, under your queenly seal, to investigate the wrongdoings of both races, then will you rightly be informed, O Mother, as to what is just and what is false.

It is believed by us, O Queen, that you have no knowledge as to the deeds of wrong that gave us so much pain, and which create lamentation among the tribes; but if, in your graciousness, a Maori Parliament is set up, you will, O Queen, be enabled clearly to determine what is right and what is wrong, what is evil and what is good, in the administrations of the two races in these Islands.

O Mother, the Queen, there are no expressions of disaffection towards you by the Maori tribes, including the tribes of the King; but they revere, only revere your Majesty; and the search after you, O Queen, has induced us to send this petition to England by the hands of the persons appointed by our Committee, who will see your very countenance and hear your words.

O Mother, the Queen, do not suppose that the sufferings under which we labour are light. Many wrongs are felt by various tribes, but the following are some which have come under our own notice:—(1) The fighting between the Maoris and the New Zealand Company in the year 1841–42 was brought about by land disputes, and Mr. Wakefield fell in the strife. (2) The war against Te Rangihaeata in the year 1842–1843: a land dispute also was the origin; and some of Rangihaeata's people were wrongly executed, their deaths being opposed to the English law, and contrary to the principles of the Treaty of Waitangi. (3) The war against Heke and Kawiti in 1844–45, caused by land sales and the withholding of the anchorage money at Bay of Islands, was contrary to the second article of the Treaty of Waitangi. (4) The fighting between the chiefs Te Hapuku and Te Moananui in 1848–1849 brought about by land purchasing on behalf of the Government. (5) The war against Wiremu Kingi on account of the block of land named Waitara, at Taranaki. (6) The war against the Waikatos in 1863, extending to the year 1870. (7) The fight among the Ngatitautahi tribe in 1879, four Natives killed, the strife being occasioned by the land purchases of Government, a portion of £700,000 having been scattered over our lands by Government Agents in 1875.

(8) The capture of two hundred innocent men of Te Whiti in 1879–81. (9) The incarceration of Te Whiti and his people in 1881–82, who were guiltless of any crime.

The following, O Queen, are references to New Zealand Ordinances put forth and said to be against the principles contained in the Treaty of Waitangi: (1) The making of unauthorized laws relating to Maori lands—namely, the Land Acts of 1862, 1865, 1873, 1880—which Acts were not assented to by the Native chiefs in all parts of the Island. Nor is there any basis in the Treaty of Waitangi for these laws, which continuously bring upon our lands and upon our persons great wrongs. (2) The Immigration and Public Works Act, and the borrowing of £700,000 expended here and there to confuse the Maoris and their titles to land.

O Mother, the Queen, these other things, and many of the laws that are being carried into effect are, according to Maori ideas, very unjust, creating disorder amongst us, giving us heart-pangs and sadness of spirit to your Maori children, who are ever looking towards you, most gracious Queen; and it is averred by men of wisdom that these matters which weigh so heavily upon us are in opposition to the great and excellent principles of the Treaty of Waitangi.

May you be in health, O Mother, the Queen! May the Almighty bring down upon you, upon your family, and upon the whole of your people the exalted goodness of Heaven, even up to the termination of your sojourn in this world, and in your inheritance in the home of sacred rest!

May you live, is the prayer of your children in the Island of New Zealand.

PARORE TE AWHA,	MANGONUI REWA,
HARE HONGI HIKA,	HIRINI TAIWHANGA,
MAIHI PARAONE KAWITI,	WIREMU PUHI TE HIHI,
KINGI HORI KIRA,	HAKENA PARORE.

For the Native people of New Zealand.

MAORI CHIEFS IN LONDON

Yesterday afternoon, a deputation of Maori chiefs, accompanied by numerous friends of the Aborigines' Protection Society, waited upon the Earl of Kimberley (Secretary of State for the Colonies) at the Colonial Office, for the purpose of seeking redress of grievances under which Native tribes, it is alleged, suffer in New Zealand. The Maori chiefs, three in number, were attired in English dress. They appeared

intelligent men, one of them having his face much tattooed. Their names were Wiremu Puhi te Hihi, Hirini Taiwhanga, and Hakena Parore. There were present Sir T. Fowell Buxton; Mr. W. H. James, M.P.; Mr. T. Fry, M.P.; Sir Wilfred Lawson, M.P.; Sir D. Wedderburn, M.P.; Mr. W. Rathbone, M.P.; Mr. A. M'Arthur, M.P.; Mr. Alderman Fowler, M.P.; Mr. Brogden, M.P.; Mr. Cropper, M.P.; Mr. Thomasson, M.P.; the Bishop of Nelson, the Rev. T. Grace (late of New Zealand), Mr. Froome Talfourd, Mr. C. Hancock, Mr. W. Wilson, Mr. G. W. Rusden, Mr. Da Costa, Mr. F. W. Chesson (Secretary of the Aborigines' Protection Society).

Mr. F. W. Chesson read a letter from Bishop Abraham (the late Bishop of Wellington) in which he stated that in 1852, Sir John Packington, being the Colonial Minister, framed a Constitution for New Zealand absolutely ignoring the 60,000 Natives, who then outnumbered the English, and who were by the Treaty of Waitangi proclaimed to be as much subjects of the Queen as the English. No Native could vote unless he chanced to have a Crown grant, which only a very few had, and this was a direct violation of the treaty. It was not till about the year 1865 that four or five Natives were admitted into the Houses of Parliament.

The Bishop of Nelson then explained the objects the deputation had in view. He said the three Maori chiefs present had brought with them a petition to the Queen, signed by Native chiefs, asking for the investigation and redress of grievances under which they laboured, and they were desirous of presenting it to Her Majesty, at the same time requesting the acceptance of some presents, according to the Maori custom. They complained of the incarceration of Te Whiti and his people, who, it was alleged, were guiltless of any crime, and also that the reserve of land promised had not been properly secured to them. The treatment of Te Whiti was the more extraordinary considering how much had been condoned in the case of disloyal Natives, while throughout the whole of the disturbances he had never been in arms against the Government, but had prevented war, in the full confidence that his legal position and claim would be gone into.

The petition addressed to "The Good Queen of England and the Empress of India," and which saluted Her Majesty, "whose fame for graciousness had extended to all the nations of the world," as Mother of the Maori tribes, was then handed to Lord Kimberley.

Lord Kimberley asked whether the petition had been

presented to the Governor or the Government of New Zealand.

The Bishop of Nelson—"I think it has not been so presented."

Lord Kimberley pointed out that the memorial ought to have been presented to the Governor and the Government of New Zealand in the first instance, in order to enable him to have their views on the question; and he remarked that under the present circumstances he could give no definite answer to the petition.

The three Maori chiefs then spoke in their own language, their statements being interpreted by the Rev. Mr. Grace. One of the chiefs (Hirini Taiwhanga) apparently understood a little English, although declining to converse in that tongue. Firstly, they complained that the Treaty of Waitangi had not been upheld, and urged that it should be maintained, and the English and Native races governed according to it; secondly, they desired that steps should be taken to unite more closely the English and the Native race, instead of the latter being treated by the former as a horse treated his enemy—kicking him away; and, thirdly, they were much concerned at the treatment to which their fellow-countryman, Te Whiti, was subjected, and they wished him to be set at liberty.

In reply to a question put by Lord Kimberley as to the reason why the petition had not been presented to the New Zealand Government—

Wiremu Puhi te Hihi said the omission was due to the haste the chiefs made to present the Petition to the Queen, as they had heard reports that her life had been attempted by assassins. He added that he was perfectly aware that Her Majesty had given the New Zealand Government power to deal with its domestic affairs, but he thought the Government at New Zealand had not acted as the Queen would have done under similar circumstances. He further stated that the Native grievances extended throughout the Island.

Lord Kimberley requested the interpreter to tell the chiefs that to pass over the Colonial Government, and to endeavour to induce the Imperial Government to act independently, would not tend to the union of the English and Native races.

One of the chiefs (Hakena Parore) said the chiefs had no wish to ignore the New Zealand Government, and they were doing their utmost to diminish drunkenness among the Native tribes by means of total abstinence societies.

Mr. Wilfrid Wilson (of New Zealand) said there was reason

to believe that some of the Native chiefs who signed the Treaty of Waitangi were not the owners of land, and there was a large number of chiefs who owned land that did not sign the treaty.

Sir T. Fowell Buxton, having observed that a good deal might turn on the question whether the treaty was obsolete or not—

Lord Kimberley said the treaty was very simple, and provided that the possession of land was to be respected. It was not the duty of the Colonial Office to advise the Queen in reference to local matters like the present. The management of the land of New Zealand was absolutely handed over to the New Zealand Government, and the Queen was advised by the Ministers of the colony with regard to these matters, and not by himself, as there could not be two governments for one country. It had been decided, as more likely to conduce to the peace of the country, that the affairs of New Zealand should be managed at the colony rather than in Downing Street. He had a strong conviction that the course was right. The question now raised by the deputation appeared to be connected with confiscations arising out of wars, and the treaty would not be concerned in such confiscations, but the point was whether they were just. Having received the petition, he should transmit it to the Colonial Government, and ask them to state their views with regard to it. It might be thought desirable to issue another Royal Commission, but that step rested with the Colonial Government.

At the request of His Lordship, the Interpreter told the chiefs that the Queen took a great interest in the welfare of the Native population of New Zealand, and it was a matter of great satisfaction to Her Majesty that of late years there had been no wars or bloodshed between the two races, which was a happy omen for the future.

The deputation then retired.

The Premier to His Excellency the Administrator

Ministers have had under consideration the despatch from the Secretary of State, dated the 8th August last, enclosing copy of a memorial to the Queen from certain Maori chiefs of New Zealand, and inviting this Government to favour him with any observations they may wish to make thereupon.

The memorial professes to be signed "For the Native people of New Zealand." After full enquiry, Ministers have

ascertained that but few Maoris were aware that such a memorial was to be presented; and that several of those who knew what was intended have no sympathy with the proceedings of Hirini Taiwhanga, from whom the memorial emanated.

Taiwhanga belongs to Nga-puhi, the principal tribe in the northern part of the North Island. He is not a man of any rank; and he has no importance beyond what he has gained in consequence of his abilities and education. As an intelligent boy, he was educated under the direction of the late Bishop Selwyn; and, subsequently it being desired to push forward Native youths of promise, he was after due instruction appointed by the Government a licensed surveyor. The appointment was not a success; and in June 1872, his license was revoked, in consequence of malpractices, reported by the Inspector of Surveys and two Judges of the Native Land Court.

The Government had for several years been making efforts to establish schools in Native districts for the education of Maori children, and in 1877 Taiwhanga was appointed master of such a school at his native settlement Kaikohe. His remuneration was a capitation allowance; but his conduct in this position was so bad that the school had to be broken up. He neglected his work, absented himself from the school and from the settlement, and, by rendering grossly false returns of the number of children attending the school, he obtained money not due to him for capitation. Taiwhanga's conduct in other transactions has been equally open to condemnation.

The other two members of the deputation also belong to Nga-Puhi. One is a grandson and the other a nephew of Parore, a Nga-Puhi chief of high family and of great respectability. He is upwards of ninety years of age, and was induced by Taiwhanga to provide the money to take his relatives as a deputation to England to see the Queen. The men themselves are respectable, but have not taken a leading position in their tribe.

The only object in giving these particulars is to enable the Secretary of State to form an opinion as to the weight that should attach to the statements and proceedings of the deputation.

With regard to the "wrongs" detailed in the memorial, Ministers desire to point out that the first six have reference to transactions during the time Native affairs in New Zealand were under the control and management of the Imperial Government, through their officer, the Governor of the

colony. A full history of these transactions will no doubt be found in the Parliamentary papers, Imperial and Colonial, in the Colonial Office; and on reference to such papers, it will be seen how little reason the Maoris have to complain.

The "wrong" standing as No. 7 in the memorial, has relation to a dispute between two tribes in reference to land, with which the Government of the colony had no connection, and for which they were not in any way responsible.

Nos. 8 and 9 refer to recent transactions, for which the Colonial Government were entirely responsible. A full account, and the justification of the Government's conduct, will be found in the documents from time to time transmitted through the Governor to the Secretary of State.

The special legislation referred to in the memorial as "unauthorised laws relating to Maori lands . . . not assented to by the Native chiefs in all parts of the Island," and as having no "basis in the Treaty of Waitangi," is not restrictive but enabling. The object of the Native Land Acts enumerated was to provide a special tribunal for the determination of Native title; to relieve the Maori owners from the monopoly held by the Government; and to enable them to sell their lands to whomsoever they pleased. In no way are the provisions of the Acts compulsory. The Maoris were and are at liberty to avail themselves of the powers conferred, or to abstain from doing so, at their pleasure.

It may be stated that, with the exception of lands confiscated for rebellion, no land whatever has been taken from the Maoris by the Government. With the exception stated, all lands acquired from Natives by Government have been acquired from willing sellers, and fully paid for. The £700,000 referred to has been paid to them, besides other large sums, for what was to them unprofitable waste.

The general legislation of the colony as to the Maoris has been more than just—it has been exceptionally favourable to them. When laws have been made applicable to the people of the colony, the object has in many instances been to except the Maoris from their stringency; and there is no instance in which they have been placed in a less favourable position than the European population. Of the many laws on the statute-book of the colony which bear out this statement, one illustration may be mentioned: the Maoris are specially exempted from all direct taxes on both real and personal property.

It may, indeed, with confidence be asserted generally that there is not, and has not been, anything on the statute-book

of the colony, or in the conduct of the Colonial Legislature, as regards the Maoris, to which reasonable exception can be taken.

FRED WHITAKER.

WELLINGTON, *December* 12, 1882.

His Excellency the Administrator to the Secretary of State for the Colonies

GOVERNMENT HOUSE, WELLINGTON,
December 16, 1882.

MY LORD—With reference to Your Lordship's despatch, No. 33, of 8th August 1882, transmitting a copy of a memorial to the Queen from certain Maori chiefs of New Zealand, and enclosing a newspaper extract giving an account of an interview held by Your Lordship with those chiefs, and several Members of Parliament and others, I have the honour to enclose a memorial from the Prime Minister, Mr. Whitaker, which he has forwarded to me in consequence of the invitation to him to make observations on the memorial, which invitation was conveyed to him by Your Lordship's directions, as already stated in my despatch, No. 88, of November 5, 1882.—I have, etc.

JAMES PRENDERGAST.

The Right Hon. the Secretary of State for the Colonies.

The Secretary of State for the Colonies to His Excellency the Governor

COLONIAL OFFICE, DOWNING STREET,
February 17, 1883.

SIR—I have the honour to acknowledge the receipt of your despatch, No. 102, of the 16th December last, transmitting a memorandum from the Prime Minister, Mr. Whitaker, on the subject of a memorial placed in the hands of my predecessor, by certain Maori chiefs of New Zealand for presentation to the Queen, complaining of alleged breaches by the New Zealand Government of the Treaty of Waitangi, and praying for the appointment of a Royal Commission in connection with the laws of the colony affecting the Maoris, and for the establishment of a Maori Parliament.

Having given these papers my attentive consideration, I request that you will cause the petitioners to be informed that their petition, which has now been reported on by the Colonial Government, has been laid before the Queen, who was

pleased to receive it very graciously; but that I have been unable to advise Her Majesty to give any directions for a compliance with the prayer of the memorialists.—I have, etc.

DERBY.

The Officer administering the Government of New Zealand.

The Native Office to Parore te Awha and others

(Translation)

NATIVE OFFICE, WELLINGTON,
April 17, 1883.

FRIENDS—In reference to the petition which you and certain other Natives have addressed to Her Majesty the Queen, complaining of alleged breaches by the New Zealand Government of the Treaty of Waitangi, and praying for the appointment of a Royal Commission in connection with the laws of the colony affecting the Maoris, and for the establishment of a Maori Parliament, I am instructed to acquaint you that His Excellency the Governor has received a despatch, bearing date 17th February from the Secretary of State for the Colonies, upon the subject of your petition.

In his despatch, Lord Derby requests that you should be informed that the petition, which has been reported on by the Colonial Government, has been laid before the Queen, who was pleased to receive it very graciously. He further says that he has been unable to advise Her Majesty to give any directions for a compliance with the prayer of the memorialists.

From your friend,

W. J. MORPETH
(In the absence of Mr. Lewis).

To Parore te Awha and Hirini Taiwhanga, Kaihu, Kaipara.

Parore te Awha to the Native Office

(Translation)

HOUHANGA, DARGAVILLE,
April 25, 1883.

TO MR. MORPETH—Friend, greeting! I have received your letter acquainting me with the result of the petition taken by Wiremu Reweti te Puhi, Hihi Parore, Hirini Rawiri Taiwhanga, and Hakena te Parore to England. I myself sent those persons to England to lay our grievances before the Queen—that is, before all her governing power—because all

the grievances that we, the Maoris, suffer from arise from the colony of New Zealand; hence our petition for the establishment of a Native Parliament in New Zealand. It was not done with the object of trampling on the authority of the Government of New Zealand. No! but we think that the Queen's authority should be exercised directly over us. We, the Maori people, are entirely subject to the authority of our most gracious Queen Victoria. The leading people in England say that it is the Europeans of New Zealand who oppress the Maori people. Well then, friend, do you write to me on the receipt of this letter. May God protect us both.—From your sincere Friend, PARORE TE AWHA.

MEMORIAL OF TAWHIAO AND OTHERS TO THE QUEEN

The Right Hon. the Earl of Derby to Sir W. F. D. Jervois

DOWNING STREET, *August* 9, 1884.

SIR—I have the honour to transmit to you a copy of the memorial which has been presented to me by the Maori chiefs now in this country.

I understand that it is contended, in support of the action taken by the Maori chiefs in making this appeal to the Imperial Government, that the powers granted to the Queen by section 71 of the New Zealand Constitution Act, 15 and 16 Vict. cap. 72, are still in full force, and that Her Majesty may properly be invited to provide by letters patent that the laws enacted by the Legislature of the colony should not extend to the Native territory; and that the Native laws, customs, and usages, modified as might be thought desirable, should prevail therein, to the exclusion of all other laws.

I shall be glad to receive the observations of your Government on this point, and also any statements which they may desire to make respecting the matters referred to in the memorial.—I have, etc. DERBY.

Governor Sir W. Jervois, G.C.M.G., C.B., etc.

ENCLOSURE

(Confidential)

Salutations!—May the Queen and her family long live! May her Government and the people of England live! May God protect you!

This is an address from the Maori chiefs to the people of England. Strangers landed on a strange land:

We, the Maori chiefs of New Zealand, have come to this distant land into your presence, on account of the great disaster which has overtaken your Maori race, which is beloved by the Queen and the people of England. Accordingly we have now swum the Ocean of Kiwa, which lies between us, and have reached England in safety, the source and fountain of authority, to the place where the Queen lives, that she may redress the ills of the Maori race inflicted on them by the Government of New Zealand, who have not directed their attention to right those wrongs up to the present time, and those wrongs are still being committed; nor is it because the Maoris are adhering to evil practices, and so causing trouble between the two races; and therefore, owing to this continued inattention of the Government, this is presented as an appeal to the highest authority. And because there was a tender regard displayed by the Queen to her Maori race, as shown in the Treaty of Waitangi, therefore it is well that those contracts and these ills should be brought before you for your consideration.

Firstly, the words of the Queen were, that Victoria, Queen of England, in her kind regard to the chiefs and the tribes of New Zealand, secured that their rights of chieftainship and their lands should be established to them, and that peace should be made with them.

Secondly, that the Queen of England shall order and consent that the chiefs and tribes of New Zealand preserve their chieftainships, their lands, their villages, their forests, and their fisheries.

Thirdly, that the Government of the Queen shall consent and order that the Queen shall protect the Maoris of New Zealand, and shall give them her laws in like manner as they are given to the people of England.

But these contracts have been trampled upon by the Government without exception. The first case of the Government purchasing land was in the year 1855. They paid a deposit for lands to some tribes without knowing whether the lands belonged to them, and much land in the Waikato, Hawke's Bay, and other places was bought in this manner; and in consequence the Maoris drew a boundary at the Mangatawhiri River, to separate the ground still held by the Maoris, and set up a head, namely, Potatau [1]—of the Maori people, who should prevent disputes between the Natives who sold

[1] Te Wherowhero Potatau, the first Maori king.

and those who retained their lands, always acknowledging the supremacy of the Queen; and this provision was made over all lands throughout Taranaki, Taupo, and other parts.

In the year 1858 the Government purchased Waitara from Te Teira, Wiremu Kingi, the paramount chief of that tribe, prohibiting the sale; but the Government sanctioned the purchase from Te Teira. Wiremu Kingi drove off the surveyors, and the Government waged war throughout Taranaki and confiscated the land.

In the year 1863 a proclamation was issued by the Government that all the Natives adhering to the resolve not to part with their lands should retire across the boundary-line at Mangatawhiri; they went and the Government followed them across the boundary and fought them. Another Proclamation from the Government declared that the Waikato chiefs adhering to the Queen should aid General Cameron, and that the Government would protect their persons, their lands, and their property. Te Wheoro and his tribe aided General Cameron up to the very last, but their lands (amounting to about 200,000 acres) and property were confiscated, and a very little portion of the land was returned; the bulk was sold by the Government to the English, and up to the present day no compensation has been made. For the property destroyed the Court ordered compensation to be made; but the Government refused to comply.

The question of the lands thus seized was laid before the Committee of Maori Affairs of the House of Parliament in the year 1879, and again in the years 1880 and 1881, and the unanimous reply was made that the Government should specially appoint a Commission to investigate that seizure; but the Government refused to accede to this proposal.

On the seizure of the lands at Taranaki in the year 1863, a law was made that seven years were to be allowed for the Government to place settlers on the land, but failing to do so within that time, that the land should revert to the Maoris. The year 1870 arrived, and the Government had failed to settle the land, and the land was returned by the Native Minister, Donald M'Lean, who said that the Government should purchase the land at 5s. or 7s. per acre; but the Government did not purchase it.

In the year 1879 the Government began to seize the land without any pretext, arrested Te Whiti and party in their homes, destroyed their houses, rooted up their crops, and removed their goods, surveyed the land, put it into the market, and it was bought by the English, and very small portions

were returned to the Natives. For twelve months Te Whiti and party were imprisoned and were never tried; they were then released, but are still under some restraining law of the Government.

When the lands in the South Island were bought by a Commission from the Queen the Commission stipulated that, on the Maoris consenting to the conditions, the villages, the fisheries, and one acre in every ten should be reserved to the Maoris, and to this the Maoris agreed; but on the completion of the sale the conditions were and have been disallowed down to the present time. A Commission was instituted in the year 1879; but the Government was not pleased to give effect to its awards.

Respecting the land at Kawhia. Before the establishment of the Government some Europeans resided at Kawhia; the Maoris allowed their residence for the purpose of trade, and rent was paid to the Natives by these Europeans; the Maoris in ignorance signed their names, and, as they paid for the goods received, were unaware that their names were obtained for a purpose. On arrival of fresh Europeans the lands were sold to the new arrivals, and these demanded a Crown grant from the Government, which was granted, though the Maoris were kept in ignorance of the transaction: and thus the Government dealt with the ground and ultimately bought it for themselves, and not until it was being surveyed were the Maoris aware that their land was alienated. Nor did the Government enquire of the Maoris whether the claims of the Europeans were just, and the Maoris condemned the transaction.

The Government submitted a Bill to Parliament to authorise them to put the land into the market, and the Bill was passed by the Parliament, the Maori members dissenting, and submitting a letter to the Governor, asking him to withhold his consent to the Bill, and the letter was forwarded to the Queen. In the year 1883 the land was thrown into the market by the Government, and the Kawhia River was buoyed; the Maoris then gathered together to prevent this, and Tawhiao [1] said to the Government, through the Native Minister, Mr. Bryce, "Let the staking of the river be done by him." But Mr. Bryce refused, and all the land was surveyed by the Government, and soldiers were placed on the land of the King, and works were pushed forward on the King's land, and the Government said that they, acting with Rewi and

[1] Tawhiao, the second Maori king.

party, should decide the boundary of the King's land, to which Rewi and party agreed. When that was settled the Government commenced operations, not confining themselves to what was agreed upon, at which Rewi severed himself from any further connection with the operations of the Government, when he saw that the King party suffered loss; and this is an example of the conduct of the Government in all their transactions in Maori matters.

The Native Land Court was instituted in the year 1866 by the Government, and that measure for dealing with Maori lands was adopted in order to destroy the rights of the Maoris over their own land, rights secured to them by the Queen in the Treaty of Waitangi.

A fresh rule was thus established, by which the Court had full powers, its authority was entirely in European hands, and the Maoris were denied all authority. It was established that ten persons were to be allowed claims over any section of ground, the majority were to rest satisfied with no land to live on, and the lands were ultimately alienated by purchase. Another rule was set up by the Court, that if the claimants failed to present themselves to the Court the land should be handed over to others, and thus the lands were sold, including the lands, the homesteads, and the plantations, and the real owners of the land were left destitute. When the Maori race asked that they might be allowed to deal with their own lands by means of their own committees, the Government declined. In cases where Europeans purchased land from Maoris who received money for lands not theirs, the purchase thus made was established to the purchasers. Assessors were, indeed, appointed for the Court, but they had no power to say anything with regard to the lands dealt with by the Court. Te Wheoro was the first Assessor thus summoned in the year 1866; but when he saw these faults he left it in the year 1872.

The rights of the chiefs over their own lands were disallowed by the Government, and the positions of the chiefs, in accordance with their Maori customs, was swept away; for the chiefs had the power to secure the land for themselves and their tribes, lest the land and the persons should be lost (by other tribes seizing it) and their rights were reduced to an equality with ordinary persons, and their words were allowed no weight in retaining their land or in directing the affairs of their own tribes: but the Government gave the rights of ruling to all kinds of persons, and the ruling of these persons, possessing no tribal rights in the eyes of the race itself, was authorised, the Government merely regarding their own appointments in

respect to these lands; and thus the Government were able to set aside and ignore the chiefs.

Maori Assessors were appointed by the Government to rule their own Maori race; only they had no powers. All powers of establishing and directing were retained by the Government, and even this is now being set aside.

Maori representatives were established by the Government, but a prohibitive rule was made by which the number of members were limited to four, and, though the Maoris demanded a representation proportionate to their numbers, this has been refused by the Government up to the present time; and these members have only nominal power and are unable to redress the Maori wrongs, and yet the Europeans have only an equal status with the Maoris. The commission charged by the Government on the monies paid for Maori lands, whether sold or leased, exceeds 25 per cent.

The payments arising from gold-bearing lands—*i.e.* 10s. per miner's right, and duties on goods—are taken by the Government, and none are returned to the Maori race, nor are the Maoris allowed any voice in directing these taxes; all are taken by the Government for the benefit of the Europeans, and the Maoris are left out of all consideration; and the result of all this is that the Government have taken the lands, the persons, and the rights of the Maori; the Maoris still lay claim to their rights, and this has been a cause of trouble, and troubles have also come on other Europeans, as happened at Marunui and other places throughout the whole Island, all from these acts of the Government. A Commission sat to investigate these wrongs at Napier. Te Wheoro, another Maori, and two Europeans sat, but the Europeans and the Maoris failed to agree, no decision was arrived at, and the lands were lost, and the Maoris, frightened at such dealings, retired to a remnant of the land of their ancestors in the King Country, and yet they are being even now pursued.

Te Wheoro rose in the Parliament of 1880, and, addressing the Government, asked them to give to the Maoris the office of Minister of Maori Affairs, then filled by Mr. Bryce, inasmuch as it was a post for the Maoris, and yet Europeans alone filled the office, though Maori names were mentioned for the office; and this is a wrong done to the Maoris, inasmuch as the Queen had given them rights. Mr. Bryce replied that the office should never belong to the Maoris.

Therefore we and our race have determined, and to us, the representatives of the tribes of New Zealand, has been assigned the work of crossing the ocean and of bringing our wrongs to

the Queen and people of England, in whose hands lay the words of life and death, that they should send and give to the Maori race laws whereby they may live, like as our friends the Europeans who sent and asked to have a Parliament of their own, and which was agreed to by the Queen; the Maoris remaining in ignorance that their friends (the Europeans) had asked for a Parliament subsequent to the Treaty of Waitangi.

Therefore we pray for our Maori race that our Queen may cherish us, that she may accede to this our prayer, and grant to us, her Maori race, these humble requests. And firstly, that you will resolutely consent to grant a Government to your Maori subjects, to those who are living on their own lands or those of their ancestors, and within the limits of Maori territory, that they may have power to make laws regarding their own lands and race, lest they perish by the ills which have come upon them; that they may be empowered so to direct themselves and their own lands lest they be altogether destroyed by the practices of the Government, unknown and not evident to the Maoris; and that also the Maoris possessing lands contiguous to the Europeans should have those lands brought under the direction of the said Maori Government, for there are many tribes who thus own land, and which they will not long hold unless thus brought under Maori Government; and these Maoris are those who are suffering most at the present time, and they will be unable to save themselves unless some such means are taken for their preservation.

Secondly, that the Queen and her Government consent to the appointment of a Maori Commissioner, appointed by the Queen, one of the Maori race, one adhering to the Queen, an upright man, who shall act as mediator between the Maori and European races in matters touching the leasing and selling of the lands of your Maori subjects, who shall investigate the laws made by the Maori Government, make them feasible, and to write his opinion to your Governor and to you also for your confirmation, lest the Maori legislation be at variance with that of the Government, and lest the Maori should fail to carry out the laws of the Government respecting them.

Thirdly, that the greater portion of the taxes levied on your Maori subjects be returned to them, to enable them to carry on their Government, granted by you to your Maori subjects, in those parts which are Maori territory.

Fourthly, that the European Judges in the Native Land Court be superseded, and that your Maori race be then permitted to direct their own affairs in that Court; that they

may be empowered to appoint their own Judges over their own lands, lest they be all lost by the present doings of the Court; that they may be able to deal with these lands in accordance with their own customs, apportioning to each tribe their share, and, having made all ready for leasing or selling, to submit all rulings to the Commissioner appointed by you, that he may look into the whole affair and see that no injurious effects come upon the Maori, and then he is to submit all to your Governor for confirmation.

Fifthly, that the lands wrongly obtained by the Government be returned to us. That all may be in accordance with the concessions made in the Waitangi Treaty and all other contracts made with your Maori subjects. That the Queen and her Government also appoint some person from England—a person independent of the Government of New Zealand—who shall carefully investigate those wrongs, and if he finds them in accordance with what we have now presented before you, that then he should decide whether the lands of your wronged subjects be returned or a compensation be made for part of it.

We, your Maori race, confidently rely on the Treaty of Waitangi, on its provisions and force, and we will be led by those provisions in these matters for which we have now swum the ocean of Kiwa, and we pray in the presence of the Queen that she will confirm her words given in that treaty, that it may not be trampled upon by the Government of New Zealand in anything they may do to annul that treaty.

Let the Queen live! Here we conclude. May God preserve you!

TAWHIAO, TOPIA TUROA,
WIREMU TE WHEORO,
PATARA TE TUHI, HORI ROPIHANA.

I hereby certify that the above is a true translation of the petition, made by me this 15th day of July 1884.

FRED H. SPENCER,
Clerk in Holy Orders.

Sir W. F. D. Jervois to the Right Hon. the Earl of Derby

GOVERNMENT HOUSE, WELLINGTON,
March 28, 1885.

MY LORD—With reference to Your Lordship's Despatch, No. 46, dated the 9th August last, concerning a memorial from Maori chiefs, I have the honour to transmit herewith a

copy of a memorandum from my Ministers. I also enclose copies of the Acts of the Colonial Parliament referred to therein.

I regret that I have been unable to send Your Lordship an earlier reply. The delay, however, has been caused by the fact that the Native Minister desired to visit the Maori districts before my Government furnished me with a memorandum on the subject. Full reports of the several meetings held by him with the Natives will be forwarded by the next mail.

I beg to refer Your Lordship to my Despatch, No. 9, dated the 1st March 1884, in which I have stated my own views with regard to the position of the Native race in this colony.—I have, etc. WM. F. DRUMMOND JERVOIS.

The Right Hon. the Earl of Derby.

MEMORANDUM FOR HIS EXCELLENCY

Ministers present their respectful compliments to the Governor, and beg to inform His Excellency that they have considered the memorial from Maori chiefs referred to in the despatch from Lord Derby, No. 46, of 9th August 1884.

Ministers are of opinion that they would least embarrass Her Majesty's Government by referring only to the period since 1865, when Her Majesty's troops were removed, when for the first time the colony was left to manage the Natives without interference by the representatives of Her Majesty in the colony. It is quite certain that since that period there has been no infraction of the Treaty of Waitangi. As it is clear that if there was an infraction previously Her Majesty's Government and Imperial funds would be liable for the same, Ministers deem it more respectful not to express an opinion on the subject, but to leave Her Majesty's Advisers in Great Britain to arrive at their own conclusions.

As to the provisions of section 71 of the Constitution Act (15 and 16 Vict. cap. 72), Ministers would remark that it appears from the very terms of the section that the Imperial Parliament contemplated that that section should only be used for a short time and under the then special circumstances of the colony. The words used in the section are, "It may be expedient," "Should for the present be maintained." So far as allowing the laws, customs, and usages of the Natives in all their relations to and dealings with each other to be maintained, Ministers would point out that this has been the policy of all the Native Land Acts. The Courts that have to deal with

Native land—and it is the land that to the Natives seems the most important—decide according to Native customs or usages (*vide* "Native Land Courts Act, 1880," section 24; see also sections 5 and 6 of "The Native Lands Frauds Prevention Act, 1881," and section 6 of "The Native Land Laws Amendment Act, 1883").

Regarding the proclamation of Native districts the County of Waipa is practically a Native district, and if the Natives desired such a form of local government as the Counties Act affords, there would be no difficulty in granting their request by the Colonial Parliament. What, however, the petitioners desire is really the setting-up of a Parliament in certain parts of the North Island which would not be under the control of the General Assembly of New Zealand. Seeing that in the Legislative Council and the House of Representatives the Natives are represented by able chiefs, and that they have practically no local affairs to look after that cannot be done by their Committees—local bodies recognised by the Government—Ministers do not deem it necessary to point out the unreasonableness and absurdity of such a request.

Ministers have not deemed it necessary to go seriatim through the allegations of the petition and show their unsubstantiality. A former Premier, Sir Frederick Whitaker, specially dealt with a petition very similar to the one now under consideration (see memorandum, 12th December 1882, addressed to His Excellency the Governor, in Appendix to the Journals of the House of Representatives, A-6, page 5); and a former Native Minister, Mr. Bryce, wrote a memorandum referring to the alleged ill-treatment of the Maoris (see memorandum for His Excellency, 11th January 1884, A-1, page 11, in Appendix, vol. i., 1884). The despatch of Your Excellency, No. 9, of the 1st March 1884, forwarding the memorandum of Mr. Bryce, also combated the statements of the Maori chiefs who had petitioned.

Ministers do not consider that there is any allegation in this petition that has not been before the Imperial Government, replied to by the colony, and dealt with before.

ROBERT STOUT.

WELLINGTON, *March* 12, 1885.

The Right Hon. the Earl of Derby to Sir W. F. D. Jervois

DOWNING STREET, *June* 23, 1885.

SIR—I have the honour to acknowledge the receipt of your Despatch, No. 39, of the 28th of March, transmitting

a memorandum from your Ministers in reference to the memorial of the Maori chiefs, which was presented on the occasion of the interview which took place at this office on the 23rd July 1884.

I request that you will inform Tawhiao and the other chiefs who signed the memorial that, as stated in the letter to them of the 13th August last, the attention of the Government of New Zealand was called to the representations which it contains, and that the reply of your Advisers—a copy of which I request you to transmit to them at the same time—has been received and considered by Her Majesty's Government.

The questions to which the memorial relates have also been discussed in the House of Commons with many expressions of sympathy for the Maori race, and of belief that their interests and their customs would be guarded and respected by the Government of New Zealand. The feeling, at the same time, appeared to be general that while the Government of the Queen in this country has no longer its former power and responsibility in regard to the internal affairs of New Zealand, it should use its good offices with the Colonial Government with the view of obtaining for the Natives all the consideration which can be given to them.

I trust that all who sympathise with and wish well to the Maoris will agree that it is most important for them to understand clearly that under the present Constitution of New Zealand the government of all Her Majesty's subjects in the islands is controlled by Ministers responsible to the General Assembly, in which the Natives are efficiently represented by persons of their own race, and that it is no longer possible to advise the Queen to interfere actively in the administration of Native affairs any more than in connection with other questions of internal government. I observe, however, with satisfaction that it is in contemplation to increase the number of the Native representatives.

Although, therefore, Her Majesty's Government cannot undertake to give you specific instructions as to the applicability at the present time of any particular stipulations of a treaty which it no longer rests with them to carry into effect, they are confident—as I request that you will intimate to your Ministers—that the Government of New Zealand will not fail to protect and to promote the welfare of the Natives by a just administration of the law, and by a generous consideration of all their reasonable representations. I cannot doubt that means will be found of maintaining to a sufficient extent the rights and institutions of the Maoris without injury

to those other great interests which have grown up in the land, and of securing to them a fair share of that prosperity which has of necessity affected in many ways the conditions of their existence.—I have, etc.,

DERBY.

Governor Sir W. F. D. Jervois, G.C.M.G., C.B., etc.

Sir W. F. D. Jervois to Tawhiao

GOVERNMENT HOUSE, WELLINGTON,
August 27, 1885.

To Tawhiao.

The Petition which was signed by you, Major Te Wheoro, Patara te Tuhi, Topia Turoa, and Hori Ropihana, and presented to the Secretary of State when you were in England was forwarded by him to me, accompanied by a letter asking for any statements which the Government of New Zealand might desire to make respecting the matter. I wrote back to the Secretary of State, and enclosed a memorandum from the Government of New Zealand. The Secretary of State has again written to me, and requested me to send to you copies of these letters. I therefore enclose translations.

You will see from the last letter of the Secretary of State that he says that the Government of all Her Majesty's subjects in New Zealand, Maori as well as European, is controlled by Ministers responsible to the Parliament at Wellington, in which there are Maori representatives, and that the Government in London cannot interfere in the internal affairs of the colony.—From your Friend,

WM. F. DRUMMOND JERVOIS.

The Right Hon. the Earl of Derby to Sir W. F. D. Jervois

DOWNING STREET, *September* 11, 1884.

SIR—I have the honour to submit to you a copy of a letter addressed to me by Tawhiao, the Maori King, on his departure for New Zealand after his recent visit to this country.

You will be so good as to inform Tawhiao that I duly received and that I appreciate his friendly farewell salutations. —I have, etc.,

DERBY.

Governor Sir W. F. D. Jervois, G.C.M.G., C.B., etc.

Tawhiao to the Right Hon. the Earl of Derby

STEAMER "POTOSI," *August* 20, 1884.

FRIEND—Salutations! Abide there with your friends, your fellow-nobles, your race, your land: I am returning to my people under the blessing of God.—From

TAWHIAO.

Lord Derby.

The Right Hon. the Earl of Derby to Sir W. F. D. Jervois

DOWNING STREET, *February* 3, 1885.

SIR—I have the honour to inform you that I have received from the chief Hori Ropiha a letter dated the 3rd December, expressing the satisfaction of his tribe—the Ngatikahungunu—at the principles laid down on the occasion of the interview between the chiefs and myself at this office, more especially in regard to uniformity of legislation.

I request that you will cause Hori Ropiha to be informed that his statements have given pleasure, and that I do not doubt that any well-founded complaints on the part of the Maoris will be dealt with fairly by the Government to which Her Majesty has given over the whole question.—I have, etc.,

DERBY.

Governor Sir W. F. D. Jervois, G.C.M.G., C.B., etc.

The Under-Secretary, Native Department, to Hori Ropiha

WELLINGTON, *April* 27, 1885.

To Hori Ropiha.

GREETING!—Lord Derby has written a despatch to the Governor of New Zealand acknowledging the receipt of your letter expressing the satisfaction of Ngatikahungunu at the principles laid down by you and Lord Derby in England. Lord Derby also says in his despatch that your statements have given pleasure, and he feels that the Government of New Zealand will deal fairly with the most important matters affecting the Maoris which Her Majesty has given to this Government to administer. Sufficient.—From

T. W. LEWIS.

Hori Ropiha to the Under-Secretary, Native Department

WAIPAWA, *July* 8, 1885.

FRIEND—Greeting! Greeting to you, and all the honourable members of the Parliament of the colony!

You have written to inform me of the receipt by the Government of New Zealand of a despatch from Lord Derby, in which he acknowledges the receipt of the letter expressing the satisfaction of the Ngatikahungunu at the principles laid down by us and Lord Derby in England.

Friend, I did send such a letter to Lord Derby, and the information contained in Lord Derby's despatch to you is correct—namely, that he does not doubt that any well-founded complaints on the part of the Maoris will be dealt with fairly by the Government of New Zealand, to which Her Majesty has given over the whole question.

Friend, I am greatly pleased at the receipt of your letter. I was absent at Mohaka, the Wairoa, and the Mahia, where I went to make known the principles laid down by us and Lord Derby, in order that my Maori tribes might hear my report of my visit to England. On my return from England I addressed the Maoris, and the people of my district were greatly pleased with what I told them. It is true that they have joined the Blue Ribbon Army,[1] and keep it faithfully.

Friend, continue to carry out a policy that will benefit the Maoris in accordance with what Lord Derby said—namely, that any well-founded complaints on the part of the Maoris will be dealt with fairly by the Government of New Zealand—and justify Her Majesty's action in giving over the whole question to be dealt fairly with by the Government.

I know what course of policy would be beneficial to the Maori people and establish friendly relations. Sufficient.—From your loving Friend,

HORI ROPIHA.

To Mr. Lewis.

Tawhiao to Sir W. F. D. Jervois

(Translation)

WHATIWHATIHOE, *September* 21, 1885.

FRIEND—Greeting. I have received your letter of the 27th of August, with the copies of communications from yourself,

[1] A Total Abstinence organisation.

your Ministers, and Her Majesty's Government relative to the subject-matter of the petition from the Maori people that I and my fellow Native chiefs took to lay before Her Majesty's Government and the people of England. In your letter you inform us of one only of the words of Her Majesty's Government—namely, that the government of all Her Majesty's subjects in New Zealand is controlled by Ministers responsible to the Parliament. Your so informing us is well. But you did not also inform us of another important word of the Government of England with reference to the Maori people—namely, that you should intimate to your Government that they should protect and promote the welfare of the Natives by a generous consideration of all their reasonable representations. Well, we see that these directions from the Government of England are no mere random words, but have a bearing upon the petition, which petition your Ministers said had no significance, and that England would not interfere. Your communications and those of the Government of England have been circulated among the Maori people of this Island.

However, with reference to the statement made by your Ministers that they do not consider that there is any allegation in this petition that they have not answered before, I and my fellow Native chiefs would say, Where are the replies taking exception to those petitions? And why are they not quoted in connection with this petition for the consideration of the Native people? And who is it that can say that the complaints raised in those petitions are similar to those made in this?

And, further, with reference to the statement that since 1865 England ceased to interfere in the management of affairs in New Zealand, and left them to be managed by the Government of New Zealand, it may be so. But the Maori people are not aware of the reasons that led their *Pakeha* friends to apply to have the sole management of affairs in New Zealand; and the assent thereto of the Queen's Government was given without considering the Maori people, or making any inquiries of them. Because the right of governing and the occupation of the Island by Europeans dates from the Treaty of Waitangi; and it was left to the chiefs, the *hapus* of the Native people, and Her Majesty to carry out the provisions of the Treaty of Waitangi, which became a covenant on the descendants.

And, further, with reference to the statement made by your Ministers that "there has been no infraction of the Treaty of Waitangi," we would ask what portion of the Treaty of Waitangi, what *hapus*, or what chiefs placed the authority over the Native lands under the Native Land Court, or gave

the Europeans the sole power to deal with Maori lands in that Court, as stated in the paragraph respecting the Native Land Court in that petition.

And, further, with reference to the statement respecting the presence of Native members in the Legislature, the status of those members was pointed out in the petition: Taking the basis of population, one Native member is returned for more than twenty thousand persons, whereas one European member is returned for every five thousand. When, indeed, have the applications of those members for increased representation been acceded to by that Parliament? When, indeed, have the applications of those members to have the grievances of the Native people redressed been acceded to by that Parliament? When, indeed, have the applications of those members asking that the Natives should have the power of administering their own lands been acceded to by that Parliament? Well, it is seen that the reason why the Government admitted Natives there (into Parliament) as members was merely in order that it could be said that Natives dealt with the wrongs now practised on the Maori people, and in order, too, that such wrongs should not be looked into, and finally to abolish those members.

And, further, with reference to the statement made by the Minister that Kawhia is a Native district: Well, if the Government really considered it to be such, why, then, did they assume to themselves the right to do certain acts in that district, such as establishing a military post on Native lands, which was a menace to the Maori people?

When, indeed, have the Government paid any heed to the application of Tawhiao and the people of that district desiring that Tawhiao should have the management of matters in that district?

Do you forward a copy of this letter to Her Majesty's Government. Sufficient.

KING TAWHIAO.

His Excellency the Governor.

Sir W. F. D. Jervois to the Right Hon. Colonel Stanley

CHRISTCHURCH, *December* 16, 1885.

SIR—I have the honour to state that I duly forwarded to Tawhiao, a copy of your Despatch No. 39, of the 23rd June last, concerning the Maori chiefs' memorial, presented by them to Her Majesty's Government whilst in England.

I have received from him in reply a letter, a translation of which, in accordance with the request contained in the last paragraph, I transmit herewith. I have, on the advice of my Ministers, informed him that there is nothing to add to the communications that have already been made.

It is the desire and practice of the Government of this colony to treat the Native population with the most perfect justice, and, as far as possible, in the same manner as the other subjects of Her Majesty in New Zealand. I submit that no good end can be served by prolonging this correspondence.—I have, etc.,

WM. F. DRUMMOND JERVOIS.

The Right Hon. Colonel Stanley, M.P.

Sir W. F. D. Jervois to Tawhiao

CHRISTCHURCH, *December* 16, 1885.

SIR—I have the honour to acknowledge the receipt of your letter of the 21st September last with reference to your petition to Her Majesty. I do not think there is anything to add to the communications that have already been made. I have, as you requested, forwarded a copy of your letter to Her Majesty's Government.—I have, etc.,

WM. F. DRUMMOND JERVOIS.

To Tawhiao, etc.

Tawhiao to Sir W. F. D. Jervois

WHATIWHATIHOE, *December* 22, 1885.

To the Governor of New Zealand.

GREETING!—I am not quite certain about the copies of the letters from your Government and Her Majesty's Government that you forwarded to me on the 27th day of August 1885, in Maori only. I am very desirous that you should send me copies of the same in English, which would be right. Sufficient.—From your friend,

KING TAWHIAO.

The Governor, Wellington.

The Under-Secretary, Native Department, to Tawhiao

WELLINGTON, *January* 29, 1886.

FRIEND TAWHIAO—Greeting. His Excellency the Governor has forwarded to Mr. Ballance the letter you wrote

to him on the 22nd December, in which you asked that copies in English of the despatches from Lord Derby, the Governor, and the Government of the colony might be supplied to you, and by direction of Mr. Ballance, I forward copies of those despatches by the mail.—From your friend,

T. W. LEWIS.

Tawhiao, Whatiwhatihoe, *via* Alexandra, Waikato.

The Right Hon. Colonel Stanley to Sir W. F. D. Jervois

DOWNING STREET, *February* 2, 1886.

SIR—I have the honour to acknowledge the receipt of your Despatch No. 127, of the 16th December, forwarding a translation of a letter which you had received from Tawhiao in reply to one founded on my predecessor's Despatch No. 39, of the 23rd June, in connection with the memorial of the Maori chiefs. I request that your Government will cause Tawhiao to be informed that I have read his letter in accordance with his desire.—I have, etc.,

FRED STANLEY.

Governor Sir W. F. D. Jervois, G.C.M.G., G.C.B., etc.

The Hon. the Native Minister to Tawhiao

(Translation)

WELLINGTON, *May* 6, 1886.

FRIEND TAWHIAO—I have been requested by His Excellency the Governor to transmit for your information copy of a despatch he has received from the Right Hon. the Secretary of State for the Colonies in reference to a letter from yourself. Enough.—From your loving friend,

JOHN BALLANCE.

Enclosure.—Despatch No. 7, of the 2nd February 1886.

COPY OF RESOLUTIONS

The Resolutions herein written were confirmed by the chiefs and *hapus* assembled at Whatiwhatihoe on this 4th day of April, in the year 1886.

1. That the Treaty of Waitangi shall continue in force, by which the authority (*mana*) of the chiefs of the Maori people was assured to them, and which also confirms and

guarantees Maori people the full, exclusive, and undisturbed possession and control of their lands, and declares that the Maori people shall be maintained in their rights.

2. That the powers conferred by the Act of the year 1852 should be maintained—viz. that a council or councils should be set up, and invested with power and full authority, and that it shall be lawful for Her Majesty to authorise such councils.

3. That the Maori people of Ao-tea-roa (New Zealand) shall act together under the law above mentioned.

4. That the Maori committees, authorised by the laws above referred to, shall be zealous in the performance of their duties.

5. That no wrong proceedings or operations of the Government towards the Maori people shall be sanctioned.

6. That the Native Land Courts Act should be repealed, and that it be left to the Maoris themselves to adjudicate on their own lands.

7. That this *runanga* (council) shall persist in its efforts to have the directions given by the Government of the Queen to the Government of New Zealand carried out—viz. that the rights and interests of the Maori people shall be guarded and respected. (This resolution was unanimously carried by the *runanga*: "Although the Government of England has nothing to do with the affairs of New Zealand, still the Government of the Queen will instruct the Government of New Zealand to devise some measures whereby justice may be done to the Maori people and their interests promoted, and that the Governor should be questioned concerning these instructions from England.")

8. That the chiefs attending this meeting be deputed to put the question to the Governor.

9. That each tribe should subscribe money for the purchase of a press to print for circulation reports of what are done and said by the Maori people.

10. That power be given to each committee to deal with lands in its own district.

These are the Resolutions that were carried.

King Tawhiao's reply in reference to the Resolutions was: "I thank you for an assent to the resolutions. I thank you, every one of you, for your discussions upon those resolutions which have been formed by you in accordance with your own wishes. I have carefully watched your discussions. There was but one tendency of all your discussions, which corresponds exactly with the object I had in view in inviting you to this

meeting. Be zealous in lifting up and in sustaining (measures for the benefit) of both these islands. Hearken ye! The views held by the English people in England are precisely the same as those held by the Maori people in New Zealand."

The Hon. the Native Minister to Tawhiao
(Translation)

AUCKLAND, *April* 17, 1886.

FRIEND—I have the honour to enclose you the reply of the Governor to the resolutions presented by the deputation (sent by you) to His Excellency on the 9th instant. There is one point in the resolutions on which I desire to offer an explanation. In the translation of Lord Derby's despatch made in the Native Department in Wellington some of the terms are incorrectly rendered. A correct translation has been made and handed to Major Te Wheoro. The despatch itself is in your possession, and there can be no doubt of its meaning, which is fully explained in the memorandum of His Excellency.—From your friend,

J. BALLANCE.

To Tawhiao.

Memorandum from Sir W. F. D. Jervois to the Hon. the Minister for Native Affairs

The enclosed replies to certain questions submitted to me in a memorandum from several Maori chiefs who waited upon me on the 9th instant with a view of laying before me resolutions passed at a Native meeting previously held at Whatiwhatihoe are transmitted to the Minister for Native Affairs for communication to the chiefs concerned.

In forwarding the paper to the chiefs, I request that you will inform them that I was greatly pleased at the loyal sentiments expressed by them at their interview with me towards Her Most Gracious Majesty the Queen, as well as the confidence they exhibited towards myself as her representative. I also beg that you will convey to Tawhiao, and all the chiefs concerned, how much I rejoice at the cordial feeling they exhibit towards the Government of New Zealand.

W. F. DRUMMOND JERVOIS.

GOVERNMENT HOUSE, AUCKLAND, *April* 14, 1886.

MEMORANDUM RELATING TO RESOLUTIONS PASSED AT A NATIVE MEETING HELD AT WHATIWHATIHOE ON THE 4TH APRIL 1886.

Referring to the Resolutions in the order submitted in a paper laid before His Excellency the Governor by a deputation of Maori chiefs on the 9th April: 1. The Treaty of Waitangi vested the *mana* in Her Majesty the Queen, and secures to the Natives their land. That treaty, in its essential elements, has been faithfully kept by the colony. A modification was made in it by which the Natives obtained the right of selling their lands to persons outside the Government, whereas under the treaty the Government had the sole right of purchasing Native lands. This modification, the only one made in the treaty, was, however, introduced at the request of the Maoris themselves. The rights of the Maori people have been carefully preserved.

2. This appears to refer to section 71 of the Constitution Act, where reference is made to Native councils. It must be observed, however, that the section is not mandatory, as will be seen from the clause itself, and from such terms as, "it may be expedient," and "should for the present be maintained." Local self-government has been extended to the Native people in the form of Committees under the Act of 1883. These Committees have power to ascertain titles to Native lands, and to hear and decide civil cases by agreement, and, in fact, may be said to be Courts of Arbitration. Their usefulness is being proved, and a large majority of the Native people appreciate them and are using them. It has been found by experience, however, with regard to titles to land, that there is often great jealousy of the committees, and that the Natives prefer to have the land adjudicated on by the Land Courts. (This remark applies also to Resolution 6.) If any other form of Maori council than that which now exists is desired under the clause of the Constitution Act referred to, it can only be obtained by Act of Parliament of New Zealand.

No observations are necessary to Resolutions 3, 4, 5, 8, and 9.

7. This Resolution apparently refers to Lord Derby's despatch of the 23rd June 1885, but does not convey a correct impression of the terms of that document. No directions are contained in the despatch. Lord Derby expressly says that "under the present Constitution of New Zealand the government of all Her Majesty's subjects in the islands is

controlled by Ministers responsible to the General Assembly, in which the Natives are efficiently represented by persons of their own race, and that it is no longer possible to advise the Queen to interfere actively in the administration of Native affairs, any more than in connection with other questions of internal government." The resolution states that there is an "instruction" contained in the despatch; but there is none. On the contrary, Lord Derby expressly recognises the right of the New Zealand Government to deal with the internal affairs of the colony without interference. The words of Lord Derby, where he refers to the Native people, are as follows: "It (the Imperial Government) should use its good offices with the Colonial Government with the view of obtaining for the Natives all the consideration which can be given to them." The particular request that Lord Derby makes, and it is only in the nature of a request, is "that the Government of New Zealand will not fail to protect and to promote the welfare of the Natives by a just administration of the law, and by a generous consideration of all their reasonable representations." He adds, "I cannot doubt that means will be found of maintaining to a sufficient extent the rights and institutions of the Maoris without injury to those other great interests which have grown up in the land, and of securing to them a fair share of that prosperity which has of necessity affected in many ways the conditions of their existence." The policy advocated by Lord Derby has been and is being carried out. A proof of this is to be found in the fact that an overwhelming majority of the Natives are satisfied with the administration of their affairs by the Government of New Zealand.

JOHN JERVOIS,
Private Secretary.

Signed by order of His Excellency the Governor. Government House, Auckland, 14th April 1886.

In the Court of Appeal of New Zealand.

TAMIHANA KOROKAI AND OTHERS *v.* THE SOLICITOR-GENERAL

1912.
July 23, 24, 25.

Oct. 7.

C.A.
Coram.
Stout, C.-J.
Williams, J.
Edwards, J.
Cooper, J.
Chapman, J.

Skerrett, K.C., Morison and Fell for the plaintiffs.
Solicitor-General (Salmond) and Ostler for the defendant.

STOUT, C.-J.—This is a special case stated pursuant to Rule 245 of our Code of Civil Procedure. Neither party, however, asks that all the questions framed in the case should be answered. Indeed both ask that some of the questions should not be answered. The point in dispute between the parties is a narrow one. The plaintiff contends that he has a statutory right to go to the Native Land Court claiming under the Native Land Act a freehold title. The Solicitor-General contends that if he, as Solicitor-General, says the land, that is the bed of Lake Rotorua, is Crown land that concludes the matter, and the Native Land Court cannot proceed to make any inquiries as to whether the land is native customary land. That is the matter in contention, and it appears to me that it is the only question that this Court has at present to decide.

It may be necessary to refer very shortly as to how the question has arisen. In 1835 there were many English people settled in the most northerly part of New Zealand. English Church Missionaries had been there for some years, they landed first in 1814; and there were traders and whalers and others that had made New Zealand their home. One called Charles Baron de Thierry, in Marquesas, claimed that he was sovereign chief of New Zealand. He so informed Mr. James Busby, who had been appointed British Resident in New Zealand, and Mr. Busby thereupon took steps to deny any such sovereignty. He and other English residents saw the Native chiefs and they formed what was called a Confederation. The thirty-five head chiefs or heads of tribes in the most northern parts of New Zealand, that is all the country lying north of the Firth of Thames, joined in a declaration that

New Zealand was an independent state under the name of the " United Tribes of New Zealand." Mr. Busby sent a copy of this declaration to the Under-Secretary of State in London, and Lord Glenelg, the Secretary of State for the Colonies, wrote to the Governor of New South Wales regarding the declaration. The Governor was directed to inform the chiefs " With reference to the desire which the chiefs have expressed on this occasion to maintain a good understanding with His Majesty's subjects, it will be proper that they should be assured in His Majesty's name that he will not fail to avail himself of every opportunity of showing his goodwill and of affording to those chiefs such support and protection as may be consistent with a due regard to the just rights of others, and to the interests of His Majesty's subjects."

Meantime the eligibility of New Zealand as a colony was being discussed both in New South Wales and in England, and ultimately in 1840 Captain Hobson, R.N., was despatched to New Zealand with two commissions, one as British Consul, and the other as Lieutenant-Governor. He reached the Bay of Islands on the 29th of January 1840, and on the 5th and 6th of February the Treaty of Waitangi was signed by many chiefs, then assembled at Waitangi in the Bay of Islands. The treaty states, *inter alia*: " Her Majesty, therefore, being desirous to establish a settled form of civil government with a view to avert the evil consequences which must result from the absence of the necessary laws and institutions alike to the native population and to her subjects, has been graciously pleased to empower and authorise me, William Hobson, a Captain in Her Majesty's Royal Navy, Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent chiefs of New Zealand to concur in the following articles and conditions."

Then follow three articles. The first article deals with the cession. It is as follows: The chiefs of the Confederation of the United Tribes of New Zealand, and the separate and independent chiefs who have not become members of the confederation, cede to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of sovereignty which the said confederation or individual chiefs respectively exercise or possess or may be supposed to exercise or possess over their respective territories as the sole sovereigns thereof."

The second and the third articles are as follows: " Her Majesty the Queen of England confirms and guarantees to the

chiefs and tribes of New Zealand and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, and fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession: but the chiefs of the united tribes and the individual chiefs yield to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in that behalf." The third is as follows: "(3) In consideration thereof, Her Majesty the Queen of England extends to the natives of New Zealand her royal protection, and imparts to them all the rights and privileges of British subjects."

Copies of the treaty were taken to various parts of both islands, and the chiefs throughout New Zealand signed it, and to the present day the treaty is regarded as their Magna Charta. The Lieutenant-Governor on the 21st May 1840 issued a proclamation, proclaiming and declaring that after the date of the treaty the full sovereignty of the North Island of New Zealand vested in Her Majesty, Queen Victoria, her heirs and successors for ever.

A further proclamation was issued on the same day proclaiming and declaring that all the Islands of New Zealand vested in Her Majesty, that is, including all country between 34° 30′ north to 47° 10′ south latitude and between 166° 5′ to 179° east longitude. A mistake was made in this proclamation in that it proclaimed from 34° 30′ north instead of as was intended 34° 30′ south. The ground of the proclamation over the South Island was that of discovery. Since then it has been recognised that the lands in the islands not sold by the natives belonged to the natives. All the old authorities are agreed that for every part of land there was a native owner. Two authorities may be cited. Bishop Selwyn said as follows: "Three points then seem to be clear on this subject: (1) That there was originally a distinct owner for every habitable spot in the Northern Island: (2) That these claims have been complicated by the obvious causes of inheritance and marriage without forms of conveyance or bequest: (3) That the rights of ownership whether in one or many joint proprietors were not alienable without the consent of the tribe."

The late Sir William Martin, formerly Chief-Justice of New Zealand, said: "So far as yet appears the whole surface

of the islands, or as much of it as is of any value to man, has been appropriated by the natives, and, with the exception of the part they have sold, is held by them as property. Nowhere was any piece of land discovered or heard of (by the commissioners) which was not owned by some person or set of persons. . . . There might be several conflicting claimants of the same land: but however the natives might be divided amongst themselves as to the validity of any one of the several claims, still no man doubted that there was in every case a right of property subsisting in some one of the claimants. In this Northern Island at least it may now be regarded as absolutely certain that, with the exception of lands already purchased from the Natives, there is not an acre of land available for purposes of colonisation, but has an owner amongst the Natives according to their own customs."

The Governor and the Legislature of New Zealand accepted this position, and numerous ordinances and acts of Parliament have been passed to enable the Maoris to transmute their customary title into freehold. The position all along assumed has been that the lands are vested in the Crown, and until the Crown issues a freehold title the customary titles cannot be recognised; but that the Crown will give to all who prove that the land was theirs a freehold title. The Crown has not assumed that land could be taken or kept by the Crown from the Natives, unless the natives ceded their rights to the Crown. Thousands of purchases in both islands have been made by the Crown, and thousands of deeds of cession are in existence. The reason why the Crown did not recognise any title in the land till a grant from the Crown had issued is dealt with in the classic judgment of the late Mr. Justice H. S. Chapman, delivered in 1847 in the case of Reg. *v.* Symonds, and in the judgment of the then Chief-Justice Sir William Martin, who agreed with the judgment of Mr. Justice Chapman. After their judgments, the Imperial Parliament in the New Zealand Constitution Act (15 and 16 Vict. c. 72, sec. 73) recognised the native title. Section 73 of that Act is as follows: "It shall not be lawful for any person other than Her Majesty, her heirs and successors, to purchase or in any wise acquire or accept from the aboriginal Natives land of or belonging to, or used or occupied by them in common as tribes or communities, or to accept any release or extinguishment of the rights of such aboriginal Natives in any such land as aforesaid: and no conveyance or transfer, or agreement for the conveyance or transfer of any such land, either in perpetuity or for any term or period, either absolutely or

conditionally, and either in property or by way of lease or occupancy, and no such release or extinguishment as aforesaid, shall be of any validity or effect, unless the same be made to, or entered into with and accepted by Her Majesty, her heirs or successors. Provided always that it shall be lawful for Her Majesty, her heirs and successors, by instructions under the signet and royal sign manual, or signified through one of Her Majesty's Principal Secretaries of State to delegate her powers of accepting such conveyances or agreements, releases, or relinquishments, to the Governor of New Zealand, or the superintendent of any province within the limits of such colony, and to prescribe or regulate the terms of such conveyances or agreements, releases or extinguishments shall be accepted."

That the Crown in New Zealand recognised that it could not treat the Native land—that is, the land over which the Natives had not given up their rights of cession—as Crown in the fullest sense is plain from various things done: (1) In 1862 the first Act to provide for the ascertainment of the ownership of Native lands, and for granting certificates of title therein, and for regulating the disposal of Native lands was passed. The preamble is as follows: "Whereas by the Treaty of Waitangi entered into by and between Her Majesty and the chiefs of New Zealand, it was among other things declared that Her Majesty confirmed and guaranteed to the chiefs and tribes of New Zealand and the respective families and individuals thereof the full, exclusive, and undisturbed possession of their lands and estates, which they collectively or individually held so long as it should be their desire to retain the same: And it was further declared that the chiefs yielded to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof might be disposed to alienate: And whereas it would greatly promote the peaceful settlement of the colony and the advancement and the civilisation of the Natives if their rights to land were ascertained, defined, and declared, and if the ownership of such lands when so ascertained, defined, and declared were assimilated as nearly as possible to the ownership of land according to British law: And whereas with a view to the foregoing objects, Her Majesty may be pleased to waive in favour of the Natives so much of the said Treaty of Waitangi as reserves to Her Majesty the right of pre-emption of their lands, and to establish Courts and to make other provision for ascertaining and defining the rights of the Natives to their lands, and for otherwise giving effect to the provisions of the Act: And it is

expedient that the General Assembly of New Zealand should facilitate the said objects by enacting such provisions as are hereinafter contained."

(2) When the natives committed rebellion or were guilty of insurrection, a special Act was passed allowing the Governor in Council to take their lands. See *inter alia* the New Zealand Settlements Act, 1863. A few of the sections may be cited: " 2. Whenever the Governor in Council shall be satisfied that any Native tribe or section of a tribe or any considerable number thereof has since the first day of January 1863 been engaged in rebellion against Her Majesty's authority, it shall be lawful for the Governor in Council to declare that the district within which any land being the property or being in the possession of such tribe or section or considerable number thereof shall be situate, shall be a district within the provisions of this Act, and the boundaries of such district in like manner to define and vary as he shall think fit."

" 3. It shall be lawful for the Governor in Council from time to time to set apart within any such district eligible sites for settlements for colonisation, and the boundaries of such settlements to define and vary.

" 4. For the purposes of such settlements the Governor in Council may from time to time reserve or take any land within such district, and such land shall be deemed to be Crown land, freed and discharged from all title interest, or claim of any person whomsoever as soon as the Governor in Council shall have declared that such land is required for the purposes of this Act, and is subject to the provisions thereof."

Section 5 provided for compensation to persons whose land has been taken, provided that they had not been in rebellion.

(3) Before Native land was treated as Crown land, open for sale and settlement, proclamations were generally made so declaring the land open. See, for example, section 6 of the Immigration and Public Works Act, 1873, and section 247 of the Land Act, 1885.

It is not necessary to point out that if the Crown in New Zealand had not conserved the Native rights and carried out the treaty a gross wrong would have been perpetrated. Since the recognition of the Native rights so often made, there may have been interference by legislation with Native land, both before and after the ascertainment of title. If, however, there were such interferences, they have been based on the theory of eminent domain. There have been statutes passed providing how Native lands may be leased, but a similar kind of interference has been witnessed in the United Kingdom in the

case of the Irish Land Acts and the Scottish Crofters' Statutes. Such interferences did not destroy the title of Natives. Native lands and freehold lands belonging to persons of the white race have also been taken under such a theory when it appeared it was for the interest of the State to do so. In such cases compensation has been awarded. To interfere with Native lands, merely because they are Native lands, and without compensation, would of course be such an act of spoliation and tyranny that this Court ought not to assume it to be possible in any civilised community.

The decision of *Wi Parata v. Bishop of Wellington*, 3 J.R., N.S., S.C. 72, does not derogate from that position. It only emphasised the decision in *Reg. v. Symonds*, that the Supreme Court could take no cognisance of treaty rights not embodied in a statute, and that Native Customary Title was a kind of tenure that the Court could not deal with. In the case of *Tamaki v. Baker* (1901), A.C. 561, the Judicial Committee of the Privy Council recognised, however, that the Natives had rights under our statute law to their customary lands.

The Native Land Act, 1909, has various sections dealing with the customary land of the Maoris (sections 84, 85, 86, and 87). What was the need of such sections if a declaration by a law officer of the Crown was all that was necessary to say that the land claimed as Customary Native Land was Crown Land? Section 88 is significant in this connection. It states " (1) for the purpose of recovering possession of customary land from any person in wrongful occupation thereof, and for the purpose of preventing any trespass or other injury thereto, or of recovering damages for any such trespass or injury, all such land shall be deemed to be Crown Lands within the meaning of the Land Act, 1908. (2) No action or other proceeding, other than a proceeding by or on behalf of the Crown under the last preceding subsection, shall be brought in any Court by any person for the recovery of the possession of customary land, or for damages or an injunction in respect of any trespass, or injury to such land." Sections 90 and 91 show that the customary titles are recognised: section 90 reads: " The Native Land Court shall have exclusive jurisdiction to investigate the title to customary land, and to determine the relative interests of the owners thereof." Section 91 is as follows: " Every title to and interest in customary land shall be determined according to the ancient custom and usage of the Maori people, so far as the same can be ascertained." Section 92 shows the jurisdiction of the Native Land Court. Formerly there was something more required than an order

of a Native Land Court to make an effective title. At one time His Excellency the Governor had to sign a Crown grant and at another time a certificate of title.

I am of opinion that the Native Land Act recognises that the Natives have a right to their customary titles. There are in my opinion only three things that can prevent the Native Land Court entering on an enquiry as to such customary title.

(1) A proclamation of the Governor under a statute, such as has been provided in many Acts, and is so provided in section 85 of the Native Land Act, 1909.

(2) A prohibition by the Governor under section 100 of the Native Land Act, 1909.

(3) Proof that the land has been ceded by the true owners or that a Crown grant has been issued.

I know of no statutory authority that the Attorney-General as Attorney-General or the Solicitor-General as Solicitor-General has to declare that the land is Crown land. The Attorney-General and the Solicitor-General are both high officers of State. They are legal officers, and they can appear as solicitors or counsel for the Crown, but there their functions and powers end. Their statement as to what is Crown property unless made in accordance with some statutory power, is of no avail. If in an action they put in a plea to that effect, it would have to be proved like any other pleading of a party to the action. The Solicitor-General has failed to cite any authority that the mere statement of the legal adviser of the Crown, or the Crown's Attorney or Solicitor-General, was to be taken as a true averment without proof.

What the customary title to the bed of Lake Rotorua may be must be considered and determined by the only Court in New Zealand that has jurisdiction to deal with Native titles—the Native Land Court. At common law there may be an ownership of the bed of navigable rivers or lakes that are non-tidal. See Kent's *Commentaries*, vol. iii. p. 427, note (*d*). The case of *Mueller v. Taupiri Coal Mines, Ltd.*, 20 N.Z.L.R. 89, turned on the effect of a grant under the Land Acts.

I am of opinion that it is not necessary specifically to answer the questions put, but only to say that the plaintiff and his people have a right to go to the Native Land Court to have their title investigated, and that the Native Land Court can only be prevented from performing its statutory duty, first, under the Native Land Act, secondly, on proof in that Court that the lands are Crown Lands freed from the customary title of the Natives, or, thirdly that there is a Crown title to the bed of the lake.

WILLIAMS, J.—The contention of the Solicitor-General is that in all cases where land is claimed by natives to be held by them under their customs and usages, and they seek to have their titles ascertained by the Native Land Court, and a title in fee simple granted to them, the Solicitor-General, by virtue of the prerogative right of the Crown, and apart from any statutory authority, could at any time step in and prevent proceedings being taken or continued. The arguments in support of this contention are that when New Zealand was annexed to Great Britain all the land in New Zealand became vested in the Crown, by virtue of its prerogative; that the Treaty of Waitangi is binding only upon the honour of the Crown, and can be disregarded at the discretion of the Crown; and that, although there may be a statutory recognition of the Native title, there is no such statutory recognition as would operate as against the Crown. Even if these arguments were sound it by no means follows that the contention of the Solicitor-General can be supported. . . . There is nothing in the Governor's commission or in the Royal instructions which expressly authorises him to interfere on behalf of the Crown to prevent the exercise of rights given to natives by the statute law of the Dominion. Has he then, by virtue of his commission, an implied power so to interfere? . . . There is a special reason why the power now claimed should not be implied. The power now claimed is by an act of state to disregard rights given by statutes which have been passed to carry out treaty obligations binding upon the honour of the Crown. If the Crown has this power, it is exercised on the advice of the responsible Minister of the Crown. Whether it should be so exercised or not is a matter affecting the honour of the Crown, not merely as the Sovereign of this Dominion, but as the Sovereign of the British Empire. It was with the Sovereign of the British Empire that the Treaty of Waitangi was entered into. Whether Imperial obligations should or should not be observed is a matter of Imperial concern for the responsible advisers of the Crown in Great Britain to decide upon and not for the advisers of the Governor here, unless the power of deciding has been expressly delegated to the Governor. Even if the power had been so delegated the Court would properly require some evidence beyond the mere statement of the Attorney- or Solicitor-General that the authority of the Crown was being exercised. . . . I agree with the conclusion arrived at by His Honour, that rights given to natives by statute to have their customary titles determined can only be divested in the manner prescribed by

statute. The rights given to natives by sections 90 to 93 inclusive of "The Native Land Act, 1909," to have a legal estate in fee simple in possession vested in the persons found to be entitled are rights expressly given against the Crown. If these sections do not bind the Crown they are meaningless and inoperative. The Crown is a party to the statute. It is difficult to see how, when rights which expressly affect pre-existing rights of the Crown are created by statute, the Crown upon the passing of the statute can disregard the rights so created, and exercise its pre-existing rights as if the statute had not been passed.

EDWARDS, J.—In support of his contention that the bed of the lake cannot be the subject of a Native title under Maori customs and usages, the Solicitor-General relies upon the inherent improbability that there was any intention, either by the Treaty of Waitangi or by the statutes relating to native lands, to recognise any such right. To hold that there is such a right would be, the Solicitor-General contends, to destroy the right of navigation in all non-tidal waters to the great detriment of the public. Such considerations might well have induced those responsible for the Treaty of Waitangi to have so framed that document as to preclude any claim by natives to the exclusive possession of land covered by navigable non-tidal waters. It may even be suggested that the words of the treaty, which guarantee to the Maoris "the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties," were intended to reserve to the natives merely the right to fish in non-tidal waters, without recognising in them any property in the land covered by such waters. It is quite possible—indeed not improbable—that there never was any Maori custom or usage which recognised any greater right in land covered by navigable non-tidal waters than this. That is a question which neither the Supreme Court nor this Court can determine. If there never was any such custom or usage prior to the Treaty of Waitangi, then the Crown will get the advantage of that when that question has been determined by the Native Land Court, or in the last resort by the Judicial Committee of the Privy Council. But if there was such a custom or usage, the treaty, so far as it is effective, is sufficient to preserve it. The treaty, like every other instrument, must be construed in accordance with the plain legal significance of the words used, and the Courts cannot speculate as to whether or not those words were used in another sense not apparent upon the face of the

instrument, or necessarily to be inferred from the subject with reference to which they are used. A lake, in contemplation of the English law, is merely land covered by water, and will pass by the description of land. *Bristow v. Cormican* (3 A.C. 641); *Johnston v. O'Neill* (1911, A.C. 552). Whatever rights were conserved to the Maoris by the Treaty of Waitangi were fully recognised by "The Native Lands Act, 1862," which recited the treaty, and was enacted with the declared object of giving effect to it. . . . In my opinion it is clear that if the Crown desires to set up its title, as a bar to the investigation by the Native Land Court in its ordinary jurisdiction of claims by natives, it must either be prepared to prove its title, or it must be able to rely upon a proclamation in accordance with the terms of the 85th section of "The Native Land Act, 1909."

COOPER, J.—I have had the advantage of reading and considering the judgment of His Honour, the Chief Justice, and, upon substantially the same grounds as are expressed by His Honour in that judgment, I have arrived at the same conclusion.

I have very little to add.

"The Land Act, 1908," contains the statutory provisions regulating the administration of Crown lands in New Zealand. In respect of Native lands, section 2 brings within the category of Crown lands only those "Native lands which have been ceded to His Majesty by the Natives on behalf of His Majesty, or otherwise acquired in freehold from the Natives on behalf of His Majesty, or have become vested in His Majesty by right of his prerogative."

Customary lands owned by natives, which have not been ceded to His Majesty or acquired from the native owners on behalf of His Majesty, cannot in my opinion be said to be land vested in His Majesty by right of his prerogative. It is true that, technically, the legal estate is in His Majesty, but this legal estate is held subject to the right of the natives, recognised by the Crown to the possession and ownership of the customary lands, which they have not ceded to the King, and which His Majesty has not acquired from them.

Section 338 of the Act draws a clear distinction between Native lands and Crown lands. Under subsection (1) of that section, where the Governor is satisfied that Native lands have been acquired by the Crown, he shall by proclamation declare such lands to be Crown lands, and under subsection (2), when such lands have been so acquired, he may give effect to any

stipulation in the instrument of sale or transfer to His Majesty for the reservation to the natives of any part of such lands, and may reserve or grant such portions in manner required by the natives.

Section 88 of "The Native Land Act, 1909," which has been referred to by His Honour also, recognises that these lands are not "Crown lands." They are only deemed to be Crown lands for the one purpose, namely, that if any person is in possession of or trespassing upon, or injuring the lands against the interest of the Native owners, then, for the purpose of protecting the Native owners the Crown may under the Land Act take proceedings against such wrongdoers. Even this provision is a guarded one, for subsection (3) of that section expressly provides that nothing in it contained shall take away or affect any jurisdiction conferred upon the Native Land Court.

CHAPMAN, J.—I agree with the judgments which have been read. It has been argued that the Treaty of Waitangi was an international treaty entered into with chiefs having the sovereignty. The contrary opinion was pronounced by the Supreme Court in *Wi Parata v. The Bishop of Wellington* (3 N.Z. Jur. N.S. 72). The terms employed and the mode of execution of the treaty leave it at least an open question whether it was so regarded at the time. It professes to be made with certain federated chiefs and certain chiefs who are not federated, but it does not state over what territories they exercised authority, though the text of the treaty seems to suggest that it was contemplated that it should be made with several chiefs who might possibly be regarded, and were provisionally and hypothetically treated as sovereigns of their respective territories. Later it became a matter of general knowledge, derived, I presume, from maps prepared pursuant to section 21 of "The Native Land Act, 1873," that there are eighteen or twenty tribes in New Zealand. If that be so the numerous signatories of the Treaty of Waitangi can hardly be described as sovereign chiefs. I agree that if they had been explicitly so declared by Her Majesty's government, or had been so treated in a course of political transactions that would have been sufficient to make them so, and that their numbers and their individual unimportance would not have rendered this impossible, provided that in each case there was a sovereign to a territory. *Hemchand Devchand v. Azam Sakaral Chhotamlal* (1906, A.C. 212). The whole current of authorities shows, however, that the question of the origin of the

sovereignty is immaterial in connection with the rights of private persons professing to claim under the provisions of the treaty of cession. *Cook v. Sprigg* (1899, A.C. 572). Such a treaty only becomes enforceable as part of the municipal law if and when it is made so by legislative authority. That has not been done. The sense in which the treaty has received legislative recognition I will refer to later. . . . From the earliest period of our history, the rights of the natives have been conserved by numerous legislative enactments. Section 10 of 9 and 10 Vict. cap. 103, called an Act to make further provision for the Government of the New Zealand Islands (Imperial, 1846), recognises the laws, customs, and usages of the natives which necessarily include their customs respecting the holding of land. Section 1 of 10 and 11 Vict. cap. 112, called an Act to promote colonisation in New Zealand and to authorise a loan to the New Zealand Company (Imperial, 1847), recognises the claims of the aboriginal inhabitants to the land. To the same effect is the whole body of colonial legislation. The expressions " land over which the Native title has not been extinguished " and " land over which the Native title has been extinguished " (familiar expressions in colonial legislation), are both pregnant with the same declaration. In the judgment of the Privy Council in *Nireaha Tamaki v. Baker* (1901, A.C. 561), importance is attached to these and similar declarations in considering the effect of colonial legislation. There the whole of the legislation from the date of the constitution is summarised. This summary includes the principal colonial Acts. Referring to section 5 of " The Native Rights Act, 1865," their Lordships say: " The Legislation, both of the Imperial Parliament and of the Colonial Legislature is consistent with this view of the construction of ' The Native Rights Act,' and one is rather at a loss to know what is meant by such expressions as ' Native title,' ' Native lands,' ' owners,' and ' proprietors,' or the careful provision against sale of Crown lands until the Native title has been extinguished, if there be no such title cognizable by the law, and no title therefore to be extinguished." I might refer further to less precise but equally important expressions, such as " tribal lands," in " The Native Land Act, 1873," section 21. The various statutory recognitions of the Treaty of Waitangi mean no more, but they certainly mean no less than these recognitions of native rights.

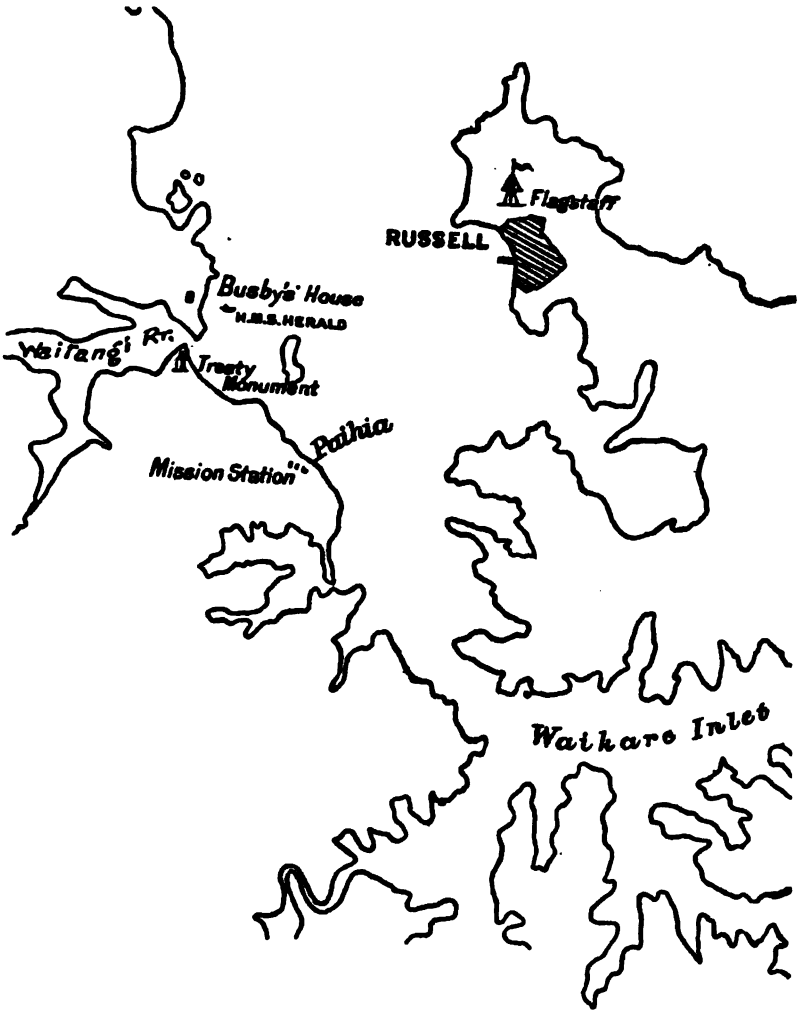
BIBLIOGRAPHY

THE following authorities have been consulted during the compilation of this work, and will serve as a useful bibliography of the treaty :—

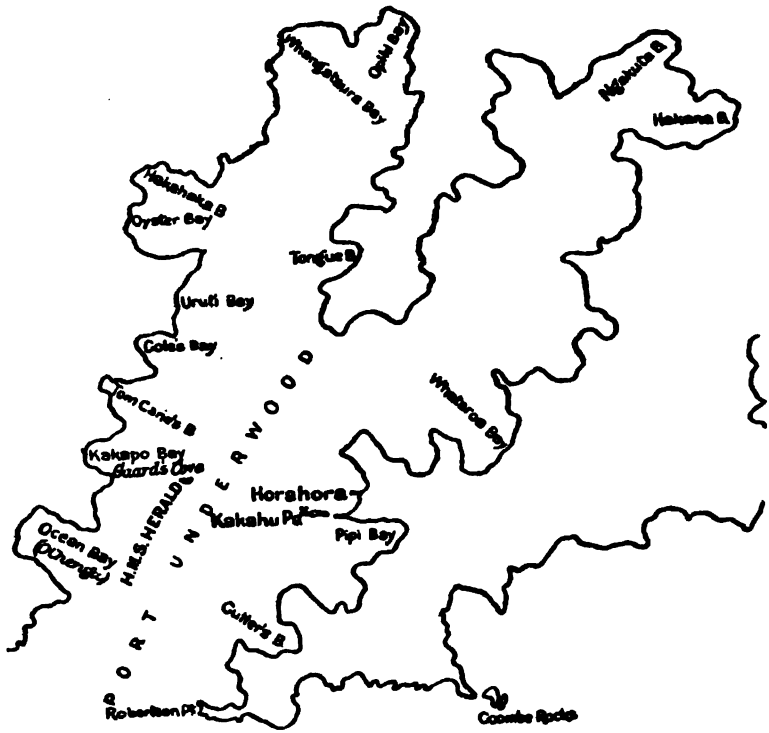
A Chapter in the History of New Zealand. Sir W. Fox. 1883.
Adventure in New Zealand. E. J. Wakefield. 1845.
An Appeal on Behalf of the Ngatiraukawa Tribe. T. C. Williams. 1873.
Ao Tea Roa (Long White Cloud). W. P. Reeves. 1898.
Appendix to Twelfth Report of New Zealand Company. 1844.
Aureretanga. G. W. Rusden. 1888.
Australia and New Zealand. A. Trollope. 1873.
Authentic and Genuine History of the Signing. Rev. W. Colenso. 1890.
Britain of the South. C. Hursthouse. 1857.
British Colonisation of New Zealand. Aborigines Protection Society. 1846.
Christian Mission to the Aborigines of New Zealand. Rev. J. Warren. 1863.
Correspondence with Earl Grey. Wesleyan Mission Committee. 1848.
Early History of New Zealand. Brett Publishing Co. 1890.
Early History of the Catholic Church in Oceania. Bishop Pompallier. 1888.
England and the New Zealanders. Sir W. Martin. 1847.
Extracts from Final Report. G. Clarke. 1846.
Facsimiles of Treaty of Waitangi. H. H. Turton. 1877.
Forty Years in New Zealand. Rev. J. Buller. 1878.
Governor Gordon and the Maori. Sir R. Stout. 1883.
Handbook for Emigrants. Dr. J. Bright. 1841.
Handbook to New Zealand. E. J. Wakefield. 1848.
Heke's War. Rev. R. Burrows. 1886.
History of Early Colonising of New Zealand. H. T. Kemp. 1901.
History of New Zealand. Alfred Saunders. 1896.
History of New Zealand. G. W. Rusden. 1883.
Judgments of Court of Appeal in re *Tamihana Korokai v. The Solicitor-General.* 1912.
Judgments of Mr. Justice Chapman and Sir William Martin, C.J., in re *Regina v. Symonds.* 1847.
King Country, The. J. H. Kerry-Nicholls. 1884.
Kohimarama Conference, Proceedings of. 1860.
Letters from New Zealand. Dr. Martin. 1845.
Life and Times of Patuone. C. O. Davis. 1876.
Life of Archdeacon Henry Williams. H. Carleton. 1874.
Life of Rev. J. H. Bumby. Rev. A. Barrett. 1852.

Life of Bishop Selwyn. Rev. H. W. Tucker. 1879.
Life of Captain James Cook. Rev. A. Kippis. 1788.
Life of Lord John Russell. J. Reid-Stuart.
Life of Rev. Samuel Leigh. Rev. A. Strachan. 1863.
Life of Sir George Grey. W. L. and L. Rees. 1892.
Manawatu Purchase Completed. T. C. Williams. 1867.
Maori English Tutor. H. M. Stowell. 1913.
Maori History. Lieut.-Col. M'Donnell. 1887.
Maori King, The. Sir John Gorst. 1864.
Maori Record (Newspaper). 1906.
Memoir of Rev. R. Davis. Rev. J. D. Coleman. 1865.
Narrative of United States Exploring Expedition. Commander Wilkes. 1845.
New Zealand. Alexander Kennedy. 1873.
New Zealand. Charles Terry. 1842.
New Zealand. Dr. R. G. Jameson. 1841.
New Zealand and its Aborigines. W. Brown. 1845.
New Zealand and its Colonisation. W. Swainson. 1859.
New Zealand and the War. W. Swainson. 1867.
New Zealand Gazette (Newspaper). 1840.
New Zealand Journal. 1840–1848.
New Zealand Revisited. Sir John Gorst. 1908.
New Zealand Year Book. 1912.
Notes on Early Life in New Zealand. Rev. G. Clarke. 1903.
Notes on Maori Matters. Mr. Justice Johnston. 1860.
Old New Zealand. F. E. Maning. 1863.
Parliamentary Debates (English), vols. 81-82. 1845.
Parliamentary Papers (English). 1839–1848.
Personal Narrative of Visits to New Zealand. Dr. Marshall. 1836.
Proceedings of the Royal Colonial Institute. January 1883.
Remarks on New Zealand. Captain R. Fitzroy. 1846.
Remarks on New Zealand. W. Brodie. 1845.
Reminiscences of a Veteran. Col. T. Bunbury. 1861.
Reminiscences of the War in New Zealand. Lieut. Gudgeon. 1879.
Romance of a Pro-Consul. James Milne. 1899.
Sketches in New Zealand. James Cowan. 1901.
Story of New Zealand. Dr. A. S. Thompson. 1859.
Te Ika a Maui. Rev. Richard Taylor. 1855.
The Aborigines' Friend, pp. 139-157.
The New Zealanders and their Lands. D. Coates. 1844.
The New Zealand Question. L. A. Chawerovzov. 1848.
The War in New Zealand. Sir W. Fox. 1860.
Voyage to the South Pole, vols. viii. and ix. Dumont D'Urville.
Waitara War—Numerous Pamphlets relating thereto.

Printed by R. & R. CLARK, LIMITED, *Edinburgh.*

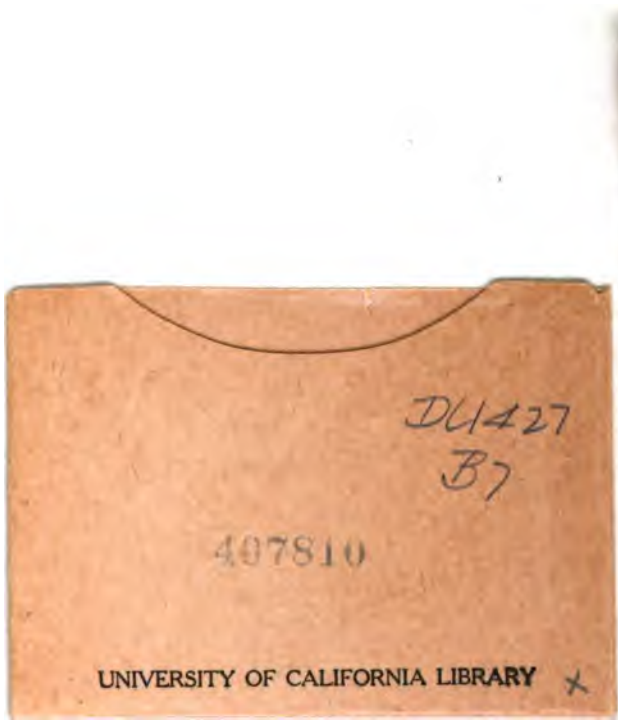


MAP OF THE BAY OF ISLANDS



MAP OF CLOUDY BAY

YC 48427


DU427
B7
407810
UNIVERSITY OF CALIFORNIA LIBRARY